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(VOLUME 10 OF 10)

SUSAN K. THOMAS
Court Reporter
Court of Common Pleas
Allen County Justice Center
P.O. Box 1243
Lima, Ohio
45802

The HONORABLE JEFFREY L. REED, Judge of the Court of Common Pleas
of Allen County, Ohio, presiding;
TERRI L. KOHLRIESER and ANTHONY J. MILLER, Assistant Prosecuting
Attorneys, Allen County, Ohio, present on behalf of the State of Ohio;
JON PAUL RION, Attorney at Law, Suite 2150, 130 West Second Street,
P.O. Box 10126, Dayton, Ohio 45402, present on behalf of the defendant;

APPEARANCES

STATE OF OHIO	*	CASE NO. CR2014 0139
Plaintiff	*	
-VS-	*	
MARKELUS Q. CARTER	*	TRANSCRIPT - JURY TRIAL
Defendant	*	SEPTEMBER 8 - 22, 2015

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

FILED
COMMON PLEAS COURT
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NOTE: THE FOLLOWING IS A LIST OF EXHIBITS OFFERED BY THE PARTIES AND RULED UPON BY THE COURT FOR ADMISSION INTO EVIDENCE. SAID EXHIBITS HAVE BEEN FILED WITH THE ALLEN COUNTY CLERK OF COURT'S OFFICE FOR TRANSFER TO THE THIRD DISTRICT COURT OF APPEALS. HOWEVER, ANY EXHIBIT NOTED WITH AN ASTERISK (*) WAS NOT FILED WITH THE TRANSCRIPT AND SAID EXHIBITS ARE HELD AT THE ALLEN COUNTY COMMON PLEAS COURT AND ARE AVAILABLE UPON REQUEST.

STATE OF OHIO'S EXHIBITS -

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4 - COURT'S ORDER TO SUPPLEMENT RECORD WITH ATTACHED
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1 THE COURT: We're reconvening on the
2 21st of September, 2015 in Case Number CR2014 0139, State of Ohio -vs-
3 Markelus Q. Carter. The defendant is present with counsel. The State is
4 present. The jurors have not been brought back in after the noon recess.
5 I just want to go on the record real quick. I gave counsel copies of the
6 latest draft of the instructions. It includes now the lesser included starting on
7 page eleven of the new ones. It goes from page eleven through page
8 thirteen. I also modified the specification to make sure that it would be
9 included in their deliberations, depending upon where they're at in their
10 deliberations, with either the Agg. Murder or the lesser Murder. I hope
11 counsel has had the chance to look all that over.
12 I also forgot to put in, and the thought occurred to me as I was making
13 the new draft, an instruction regarding the CD and the DVD's that are in
14 evidence. So, I've handed counsel now the one page that I've included in the
15 instructions. It comes in -- it will come in towards the end. I don't know where
16 it's at. I think it's on the old page twenty-two after we talk about them
17 selecting a foreperson. I'll give them the instruction with regard to, and it will
18 be around twenty-two and twenty-three, the instruction about if they want to
19 view the DVD's or listen to the CD they have to do that with Court personnel
20 and can't deliberate in their presence. So, I've given you that.
21 It was pointed out to me that in the last version the date on the verdict
22 form for the lesser included Murder was the wrong date. So, I've cleaned that
23 up on the original. I didn't print out original new ones for that. If you want a

1 copy of the original you can have that. But, I've cleaned that. It said May of
2 2014 and it should be September, 2015 obviously. So, we'll go forward there.
3 What I'll do after closing arguments is I'll give counsel one more
4 chance if there's anything else before I let them retire. If there's anything else
5 you want to put on with regard to the instructions let me know at that point.
6 Okay?
7 Anything from the State?
8 MRS. KOHLRIESER: Your Honor, I
9 apologize. I was trying to look. Where are you intending to put the
10 DVD's/CD?
11 THE COURT: It was after the part on page
12 twenty-two regarding 'after you retire select a foreperson'.
13 MRS. KOHLRIESER: Okay. Thank you.
14 THE COURT: It will be in there towards
15 the end because I tell them 'I'm going to place in your possession the exhibits
16 and the verdict forms' and then that's when I'm going to say 'DVD and CD
17 recordings and testimony relating to it' and that may be grammatically a little
18 bit sketchy, but they'll get the drift. Okay?
19 MR. RION: Is there any way to turn the
20 heat down? I don't know if it's me, but it just seems warm in here.
21 THE COURT: Would it help if you -- well,
22 that fan always makes too much noise. Maybe once we get started, Monica,
23 you can see if maintenance can -- it's all on computer, Mr. Rion. When it gets

1 cooler outside the computer thinks it's cold and so it pumps in heat. I mean,
2 but we'll try.

3 MR. RION: I understand. Thank you.

4 THE COURT: I am going to note, too, for

5 the audience, and this is a public Courtroom, but I'm exercising my discretion
6 and saying that other than Court security or law enforcement I don't want
7 anyone standing in the audience. There's nobody standing there now except
8 for law enforcement, but there was earlier. I know it's a crowded Courtroom.

9 Also, to avoid the distraction, no in and out traffic during the Court

10 proceedings. So, once you're in, unless it's an unavoidable emergency, you'll
11 remain in. Once you go out we're not going to have a reentry. So, anybody
12 who's not here when we get started -- so, everybody look around. If there's
13 anybody you want to get in here now, well, you'd better get them in here now
14 because we're going to have them not let anybody else in. Okay? All right.

15 Everybody ready to go with defense closing?

16 MR. RION: Yes, your Honor.

17 THE COURT: Let's bring the jurors in.

18 (WHEREUPON, JURY WAS BROUGHT INTO THE COURTROOM.)

19 THE COURT: Okay. We're reconvening

20 with the jurors in CR2014 0139. It's already on the record. The jurors have

21 returned back into the Courtroom.

22 Ladies and gentlemen of the jury, we'll continue with the presentation

23 of the closing arguments. Now the defense has an opportunity. Mr. Rion,

1 you may make your closing argument.

2 MR. RION: Thank you, your Honor. May it

3 please the Court, everyone present today, members of the government, and

4 ladies and gentlemen of the jury. I want to first start by thanking you myself.

5 Your sacrifice of over two weeks is what makes democracy work and it's real.

6 You gave up part of your lives, not just for Mr. Carter, but for the judicial

7 system itself. That's a real sacrifice that not a lot of people in the world can

8 say they make for their country to protect something as sacred as we have.

9 I want to start with where we left off with in voir dire which was a

10 statement by William Blackstone. He was an Englishman that sort of created

11 the common law of our country. The statement that he made was, "It is better

12 -- that all presumptive evidence of felony should be admitted cautiously for

13 the law holds it is better that ten persons escape than one innocent party

14 suffer." Now, that was in England. Ben Franklin repeated that same

15 statement. He said, "It's better that a hundred guilty persons should escape

16 than one innocent person should suffer." The importance of that statement as

17 it relates to you today goes to the burden of proof and what beyond a

18 reasonable doubt really means. It's a standard of proof, and as we said in the

19 beginning, it's the highest in the world. It's not, well, it's likely that it looks that

20 way, and common sense would tell me it's that way. It's not clear and

21 convincing evidence and I'll accept it because I find that. It's beyond a

22 reasonable doubt. That's the standard. The Judge will tell you that you have

23 to be firmly convinced of the status of the evidence. This case, well, this case

1 is largely a circumstantial evidence case. You have to be firmly convinced
2 about the inferences that the Prosecutor and the government are asking you
3 to draw. If you're not firmly convinced about that inference then that piece of
4 evidence maybe shouldn't carry the weight that it might carry around the
5 kitchen table.
6 So, I want to start with you in showing you what the evidence actually
7 is and what it actually shows and from there, piece by piece, go through it and
8 show you how the circumstantial evidence, in fact, does not point to Markelus
9 Carter as the person that gunned down Ken Warrington.
10 Let's start with something very basic and what I think started this case.
11 It's the documents that were found on the table of Markelus Carter, on his
12 kitchen table. If you'll recall, Detective Clark said that he walked into the
13 kitchen and he saw the e-mails from Faye - I'm sorry - from Sonya to Ken and
14 he says, "hmm". He didn't know, he did not know, that Officer Godfrey had
15 been in discussion with Markelus Carter, that they had taken testimony that
16 week before, the Thursday before, he did not know that. So, obviously if you
17 walk in somebody's house and Ken Warrington is killed over here and you
18 walk into somebody else's house and you see a document that has Ken
19 Warrington's name on it you're going to go hmm, that's strange, until you get
20 the inference, until you have more information. Once you have more
21 information it becomes clear. Tarah, Mark, Markelus, they weren't out trying
22 to cause trouble and threatening people the week before. No. They had
23 gone to the law. They had gone to law enforcement, as the twelve/thirteen of

1 you would do if you felt that there was an injustice that had occurred. This
2 wasn't a case where somebody was out there trying to terrorize somebody. If
3 you'll recall, you have the statements of Faye, and you have the statements
4 of Pam, and you have the statements of anybody else that Markelus talked to
5 and never a threat. Never. Always courteous. That will play and be
6 somewhat important as we look down the road on that. So, this piece of
7 evidence, which you could say 'boy, it's so coincidental that this was spread
8 out or placed on the kitchen table of Markelus Carter', has an innocent
9 explanation and it would be where you would put it, I guess, if you were
10 meeting with the police officers and going through the documents and you
11 had hired a lawyer and you were going through your case and everything
12 else. That's what started Detective Clark to say hmm.
13 There's a myth in ancient Greece that's relevant for your
14 understanding. Give me a second to explain it. There's this giant called
15 Procrustus and he sits at the crossroads out in the country of Greece. He is
16 far enough away that anyone who passes by has to spend the night in his
17 house because there's no other place for them to stay. He has a bed.
18 There's only one bed. He tells people that they can go and sleep in that bed.
19 But, what they don't know is if they're too short the giant will stretch them so
20 that they fit in the bed just perfectly. If they're too long, tall, he'll compress
21 them and push them in so that they fit in the bed perfectly. He changes the
22 person to match the bed. If you look at the evidence here, the next piece of
23 evidence, it sort of fits into that concept. They go to Markelus' house. Now,

1 mind you, what are they looking for? They're looking for a hoodie that has
2 pockets that's camouflage. That's the description that we have. We don't
3 have just a camouflage. We don't have not a hoodie. We don't have not
4 pockets. It was very, very specific. A hoodie with pockets. They want you to
5 look at a picture, a far out picture. If you'll recall, this was Officer Whitney's
6 testimony that that's how the room looked when he first saw it. You don't see
7 any camouflage. You don't see a hoodie. You don't see any pockets. In
8 fact, you don't see anything. But, then they start putting shirts up there that
9 have camouflage. They still don't have pockets. They don't have a hoodie.
10 But, they say, 'well, that's consistent with what she said because it's the
11 same, or, sort of the similar pattern'. I think Rosalind Johnson's exact words
12 were 'yea, it kind of looks like that', or something to that effect. Okay? How
13 many people have a camouflage t-shirt in their house? I would say many.
14 But, they want you to believe that he was wearing this at the time, even
15 though the physical description, the only eye witness to this event, says it's a
16 hoodie with pockets. They want you to disregard that. They want to impose
17 on you that this must be that garment. Then they say, "Well, we can prove
18 that it's that." They put on a person that shows gunshot residue and they say,
19 "Well, these things, these two pieces of clothing have gunshot residue on
20 them and so, therefore, that's evidence that points - you can draw an
21 inference that he must have shot a gun that night and specifically shot Ken
22 Warrington." Okay? Maybe. We all saw it. We heard it. It was one of the
23 things he said. But, if you remember, Mr. Congleton testified very clearly that

1 there is another way that you can get gunshot residue on your clothing. The
2 first way would be if an officer handled the evidence with his bare hands. All
3 it would take is take a shirt that's turned inside out and you want to put it up
4 so that it can be photographed and you go like that. Gunshot residue is
5 microscopic. That could contaminate it. But, also, I suppose if Markelus
6 handled a weapon and then put on his shirt that that could contaminate it.
7 That's science. This isn't the defense trying to come up with something. This
8 was Mr. Congleton's testimony that this is a reasonable inference and just as
9 valid as any other inference that could be drawn. You have a shirt that does
10 not match the description of Rosalind Johnson that simply had some gunshot
11 residue on it, a shirt that wasn't tested until 2014. That shirt was not tested
12 for gunshot residue until 2014.
13 There were four officers that you heard talk about the property logs.
14 You're going to see the property logs. You're going to see how loose those
15 property logs were at that time. They have bullets that were missing for five
16 years. They have clothing that was checked out and was never checked
17 back in. We have officers handling it on, if you'll recall, on tables and taking
18 pictures of it on tables. If they take something and put it on the table, like this,
19 and then they put something else on the table, well, it's a little unclear what
20 inference can be drawn from those two pieces of clothing. One inference that
21 could be drawn is, well, it doesn't have a hood and it doesn't have pockets
22 and so it's not what Rosalind Johnson was talking about. The second
23 inference is that that gunshot residue is meaningless because obviously

1 Markelus had weapons in the house. The officers asked him if he had
2 weapons in the house. "Yea." They even asked him, "Do you have any nine
3 millimeters? Have you ever owned a nine millimeter?" What's his answer?
4 It's not 'oh, no, I don't know anything about nine millimeters'. He said, "Sure,
5 I've owned plenty of nine's." Sure, I've owned plenty of nine's. Is that the
6 answer somebody, three hours after they just killed somebody, would give to
7 that question to an officer? Sure, I've owned plenty of nine's.
8 Now, the camouflage shirt that's not a hoodie is inconsistent with the
9 government's theory. The camouflage t-shirt that's even shorter, is the exact
10 same argument. The gloves fall under the same theory. Number one, same
11 thing, you handle this weapon and then you handle these gloves, well, you're
12 going to put gunshot residue on them. If you're an officer and you pick up
13 these gloves you're going to find gunshot residue on them. For four, over four
14 years, these things were not tested by police. For four years they sat -
15 sometimes observed and sometimes unobserved. There's no blood. There's
16 no indication they were wet. There's no indication they've been used.
17 There's no indication that they had any, anything. They're there in winter
18 when it's fifteen degree outside. It would be normal for a person to have a
19 pair of gloves on their kitchen counter. There's nothing unusual about it.
20 I just don't know what to make of Officer Whitney. I want to believe -- I
21 want to believe. But, every time you would ask him something you would get
22 an opposite answer when you had a picture to prove it. He said he took
23 pictures from far off and then took pictures of close up. We showed him the

1 camouflage from far off and there's no camouflage, and you show him close
2 up and it's close up. You show him a picture of where the CD's are and the
3 movies from far away and there's nothing unusual about the picture. You
4 show him the picture close up and, lo and behold, there's a box of
5 Winchester. The same in the basement. Showed him pictures from far
6 away in the basement. The first picture that was supposed to be taken
7 there's nothing. You show him a picture close up and all of a sudden he has
8 something. He says that everybody is wearing gloves - there's nobody in
9 there that doesn't have gloves. Yet, we look at pictures and he doesn't have
10 gloves. He says that he's the only one that collected all the evidence and put
11 it all together. But, if you look at the box of shell casings that were taken in
12 this case you'll see that it's not Officer Whitney that collects it allegedly, but
13 Officer Marik allegedly collects it. It says that he was out of there by the early
14 afternoon hours, but it says here that it wasn't collected until six P.M. You
15 can look at it. You'll recall that he said he was the only that touched the
16 evidence and that he personally collected it all and that he put it into the car
17 himself and that he took it and documented it into the Police Station.
18 So, if I'm looking at the camouflage and I have an innocent explanation
19 for it, then an inference can equally be drawn this way as it can be drawn that
20 way. If I look at the gloves and have the same inference, and if I look at the
21 e-mails and have the same inference, then what's left? What's left?
22 We have Stephen Upham. Stephen Upham, I submit, lied to you. He
23 lied to you because he said that he, within two hours of knowing about this,

1 ran and spoke to Sergeant Smith. We know it was closer to two weeks
2 instead of two hours. We know that he was collecting information during that
3 time. He was asking where could the gun be? Could it be in the lake? What
4 did it look like? Does he still have it? He's asking questions from inmates to
5 try and figure out what he can tell to Sergeant Smith. When he got up there,
6 okay, you've got to judge his credibility. It's true that some people get up and
7 tell you the truth and there you are. Some people get up there and lie. So,
8 we know the one lie. You either have to say that Sergeant Smith was lying or
9 you say that Steve Upham was not presenting it. But, go deeper. Let's look
10 at corroboration for a second. What did Upham say? He said that two weeks
11 before that Markelus Carter (sic) had threatened the kids. Tarah was on the
12 stand. The Prosecutor would have asked 'what was the threat two weeks
13 ago; what happened; what was the threat?' Did you hear any evidence about
14 a threat from two weeks ago? Zero. In fact, not only was there not a threat,
15 any evidence of a threat, but there's not even a rumor of a threat within the
16 last two weeks or at any time. From all accounts Mr. Warrington was a fairly
17 mild mannered man. I don't think Mr. Warrington would threaten anybody. I
18 don't think that was his nature. So, the first piece of evidence that he gives is
19 sort of not only uncorroborated, but doesn't ring true. The second thing he
20 said was, "Well, he said he killed him." Did he say how? Did he say where?
21 Did he say when? Absolutely no detail whatsoever. He was just like, "He
22 said he killed him." Were there witnesses around when he said it? Anything?
23 Any piece of corroboration that you could say? Zero.

1 You heard from Abdul Bari and you heard from a couple other
2 witnesses who said that it was pretty obvious that Mr. Upham and Mr. Carter
3 did not get along. Them not getting along, by the way, was unfortunately
4 substantiated by what you saw on the video.
5 What did you see on the video and what did you hear testified to? You
6 saw that by no fault of Mr. Carter's he was put in a locked cell with the person
7 that was going to come in here and, to use Markelus' words, 'why are you
8 going to lie on me'. That's what he said. That's what Upham said he said. It
9 started with Mr. Upham saying, "How's your case going, Carter?" I don't care
10 how you phrase it, whether you say it in a sarcastic tone, whether you say it in
11 a nice tone, whether you say it, well, it doesn't matter the tone, the person
12 that's trying to come into Court and lie on you, that could potentially put you in
13 prison for a long time, that question is going to evoke an emotional response.
14 It just will. The Prosecutor wants you to believe it's evidence of guilt. There's
15 a couple of things. When a person finds another person in a certain situation
16 things happen that really have nothing to do with anything except for, you
17 know, just losing it, losing your cool. You find your spouse with somebody
18 else, you have a reaction. You're locked in a cell with someone who taunts
19 you by saying 'how's your case going', knowing he's going to come in here
20 and try to say you killed somebody, and Markelus' first response was 'why
21 you lying on me', and you can see his hands start coming up. He's asking
22 questions. Now, it's unfortunate that it happened and I don't think anyone in
23 this Court meant for it to be that way. I hope they didn't. But, it's an

1 unpredictable situation that was created through no fault of Mr. Carter's.
2 They can say, 'oh, Mr. Carter could have said that that's Mr. Upham'. But,
3 Mr. Upham could have just as easily said, 'that's Mr. Carter'. The two of them
4 were put in a room. They clearly didn't like each other before then. Then
5 here we are. So, I didn't like seeing it and you didn't like seeing it. But, I'm
6 not convinced that it's really all that relevant to this case.
7 So, what's left? Well, they have another piece of inferential information
8 they want you to look at and it's this MySpace account. It does say his mood
9 is determined. It says that at the bottom. Now, if he had just written that that
10 morning then I get it, it might be relevant. But, what if Markelus had opened
11 up his MySpace account six months before, or a year before, or whenever all
12 this came into being and they asked him to fill in the space that says 'mood'
13 and he put determined? It's sort of his theme. Then is it relevant to this
14 case? I don't think so. But, the Prosecutor wants you to see that this
15 inference is so strong that you can take it and say, well, his mood on that day
16 was determined, even though there's no evidence that it wasn't added in six
17 months earlier. Detective Clark could have asked MySpace. He could have
18 gotten some of the data. Maybe some of the computer people could have
19 seen when he created it and asked. But, it could be damning if they come in
20 here with the story that the guy's MySpace account, that the MySpace
21 account said determined and his mood on that morning was determined. It
22 starts the imagination going. It's what makes circumstantial evidence so
23 powerful - it's because it starts your imagination going. It starts your

1 imagination going so that you actually disregard the physical stuff you do
2 have. You start disregarding that the only description of the assailant in this
3 case was a hooded person - not man - person, man or woman is what
4 Rosalind Johnson said, walking quickly, with pockets.
5 Then Steve Upham wants to talk about the paintball mask. So, they
6 find a picture of Markelus in his paintball garb. So, that proves that Stephen
7 Upham, through the years that he was with Markelus Carter, knew that he
8 liked to play paintball. Now, if Rosalind Johnson had said the man was
9 wearing a mask, or the woman was wearing a mask, okay, then I get it. Then
10 the things start to sort of connect a little bit. To simply show a picture of a
11 happy man wearing his paintball uniform and saying that somehow that has a
12 ring of truth to it in this case is ridiculous. If it showed that Mr. Upham had
13 some knowledge of Markelus' hobbies, okay, fine if that's what we were trying
14 to prove. But, there's no person that says that the assailant, the person that
15 killed Mr. Warrington, was masked. In fact, the information would probably
16 point otherwise. She said that she saw them walking down the alley. She
17 had a frontal of the person that did it, assuming that the person that walked
18 down the alley was the person that shot, which is another inference, I guess,
19 but a decent one given the hour of night. But, there's no description of that.
20 So, the Prosecutor, in the first part of her closing, said that Mr. Upham was
21 able to point to a paintball mask and - let me get the quote because it was an
22 interesting one - "ring of truth - it gives Mr. Upham the ring of truth." But, what
23 does it show? So, now we're at a place that if we get rid of paintball masks --

1 By the way, let's finish up with Joey Moore. What does Joey Moore
2 say? Well, the Prosecutor said that Joey Moore, in 2009, met with the
3 detective and said something about a Mac-10 and that he killed someone.
4 Well, that's wasn't the testimony. If you recall, in 2009 there was some
5 reference to a Mac-10 and then in 2014, after Markelus is indicted, after this
6 thing has a life of its own, Joey Moore says, "Well, yea, he said he smoked
7 the bitch." Again, no corroboration. If you'll recall when he testified first he
8 said, "He killed," and the Prosecutor said, "What's that mean?" He said, "Oh,
9 he killed his girlfriend, I mean, the ex, or, his ex's boyfriend." He changed. I
10 don't know why you would get that confused - whether he killed a girlfriend or
11 an ex's boyfriend. But, he clearly said girlfriend. Then it was, "Is that what
12 you mean?" "Oh, no. I meant ex's." But, you have no corroboration. No
13 sense of where he was when he said it, how he said it, what was the context
14 of the conversation, or why he would say it. You have Joey Moore begging
15 the officer, Detective Clark, multiple times with 'can you help me; can you
16 help me; can you help me'. He steals from him right there. He takes
17 cigarettes and puts them in his sock. He hides them. He doesn't think people
18 are watching on the camera. That's their case.
19 So, everything they have pointed to has an inference. The inference,
20 you could say, well, this points this way and that points that way. But, if I can
21 simply look at the same piece of evidence and say, no, this points this way
22 and this points that way, well, it wouldn't be fair to take every inference and
23 assume that it points a way towards guilt when it doesn't clearly or

1 necessarily point that way. Within the body of evidence, within pictures,
2 within physical descriptions, you have opposite explanations for the material.
3 Now, we come to Sonya. There was only one person that I can tell
4 that clearly lied to you and the lies went on and on. I can only ask myself
5 'why'. By the way, she's also the only one that threatened somebody in this
6 case when she told Faye 'don't fuck with me'. Now, she tells Detective Clark
7 they're dating; they've been seeing each other for a year; he moved in in
8 November; and she is in love with him. She tells you that, oh, they weren't
9 dating; they only had a two week fling; and that was the end of it and he
10 would come and go and he was actually staying with Mrs. Warrington. Maybe
11 she messed up at one point because she said something about a key, if you'll
12 recall, if you remember. She said, "Ken had called me that day, or the day
13 before, because he no longer had a key to my house," or he had left it there,
14 or he had given it back or something, but he needed to come and get his key
15 because he needed to go and get his uniforms to take back to Faye's house.
16 Essentially he was moving out would be the implication. So, on this day,
17 when Tarah is of the belief that divorce papers are supposed to be on their
18 way, you have a counter message coming in, at least that she's testifying to
19 to you, that Mr. Warrington is moving back in with his wife at that time and
20 he's coming to get his uniforms to go. That was the testimony. She lies
21 about -- well, let's go to that morning. If you'll recall, she went on and on
22 about that motion light. She said that the motion light was in Tarah's room -
23 I'm sorry - the motion light, and you'll have all of the exhibits. If you'll

1 remember you went out to the scene way back when this case started and
2 we asked you to look at the light that was on top of the barn, or the shed
3 there, and is now white and black if you'll recall. There was one there when
4 you saw it in 2015. If you'll recall, I showed this picture to Sonya and Sonya
5 said, "Well, you just can't see past this. The motion light is on the roof just
6 past there." We had her draw it on Defense exhibit 'A' so there would be no
7 question about what she was actually saying. She said the only reason she
8 went into Tarah's room that morning was to wake her up, but then she saw
9 this motion light on. That's the first time that she had ever opened the blinds
10 to look outside to see what it is. Now, when she looked outside she saw
11 Ken's truck. If you'll recall, she said that she didn't think Ken was going to be
12 there that morning and she only thought that he was there because she
13 looked out the window and she saw Ken's truck there. But, she didn't think
14 he was going to be home that night. But, she looks out and she sees Ken's
15 truck. This light, she even goes on to describe it, a thousand watt bulb and it
16 was as bright as could be and there it is. She tells this story. Then she goes
17 out and she starts looking around for him and she can't find him. Tarah fills
18 in - she goes and opens the front door of the house, which they never use,
19 and then finally the one place where he would logically be if he wasn't in the
20 house, the last place she looks, is where they find him. Why the lies?
21 Because they're clearly lies. You'll have pictures of this. Why are things
22 different that night? Why is she more intoxicated than she ever was? Why is
23 she throwing up in the Police Station? Why is she lying about why she

1 entered the room? Why is she looking for Ken in the first place when he's
2 not even supposed to be there? Why can't she give you any detail about
3 what happened after she sees Ken's body? Why does she lie about the
4 relationship that she had with Ken? Why did she lie about its intimacy, or lack
5 of it? Why did she say they never slept in the same bed - that Ken always
6 slept in Mark's bed? Why was she upset that night? What triggered her?
7 Now, I'm not here to say that I have proof that Sonya did this. I'm not saying
8 that I ever could. But, there's a lot of questions that the Police never asked or
9 followed up on? Why would she lie about Agruello Harris? It doesn't matter.
10 I don't think Agruello killed anybody. But, why would she lie about having a
11 relationship with him? If she's lying about having a relationship with him, who
12 else out there that we don't know about -- and the only people that were really
13 interviewed here, men wise, would be people from Husky, from the Refinery.
14 Right? So, these are just the men we can find to ask her about whether or
15 not she's had a relationship with them and how they would react to her. What
16 if there's another man that we didn't find, that nobody asked Sonya about,
17 that she couldn't lie and say 'no, I didn't have a relationship with him'. But,
18 who was actively engaged sexually with her and then Ken comes home? I
19 don't know. I'm just saying there's a lot of lies there that create a lot of
20 thoughts on what could have happened.
21 Let me go back to -- and we know she lies on weird things. I mean,
22 even Officer Hile. She said she had a scratched up face with dried blood on it
23 when she saw the officer on December 17th, 2007. You heard Hile. He

1 testified. The idea that she said back then on that day, 'he hit me with his
2 fist; he didn't hit me with the gun', and then she comes in here and tells you
3 that he hit her with a gun. The idea that they didn't even find a gun in the
4 house. They found like a CO-2 gun or something like that. They didn't even
5 find a gun in the house when they went and searched it after the whole
6 standoff and everything like that.
7 Then you get into things like this license plate. Within a week's time
8 she puts number one asshole on his car. Two days after Markelus is in jail --
9 two days after Markelus is in jail this strange letter arrives at the Police
10 Department. That letter has a bunch of information in it - oh, you'd better look
11 at Faye. It's silly. I mean, it makes no sense. I'm not thinking that the
12 evidence, the information here means it's important for the purpose of looking
13 at someone else like Faye for this. But, look at the evidence for a second.
14 When you're back there you'll have it. Look at this L. Look at that L.
15 You're going to have some of the e-mails back there, the e-mails
16 where Sonya is saying to Ken, 'when it becomes clear that you're going to be
17 with me and not with anybody else and we'll be together then let's get this
18 relationship started'. It's clear from those e-mails when you look at them that
19 Sonya wanted Ken and Sonya did not want Faye to have Ken if she were to
20 have him. There's no other way to read those. She came up here and she
21 said, "Oh, it was just a joke." Oh, it was just a joke? Read them. Those
22 aren't jokes. That's not a joking conversation they're having.
23 Officer Sarchet said that there were no motion lights in the pictures.

1 He was there that day. He saw it. He had images of it that he took that he
2 testified were accurate.
3 There were cigarette ashes outside, right outside, if you'll remember.
4 The officer was, oh, they didn't really find any great significance in those
5 cigarette ashes. But, it indicates that somebody -- and they're current. You'll
6 see pictures of them. They were recent cigarette ashes very close to the
7 body of Ken Warrington. That would be evidence of somebody sitting outside
8 waiting, smoking, and thinking. Sure, they're not going to solve a crime. But,
9 it shows that somebody was sitting there that would probably have a right to
10 be sitting out there. It's a maybe.
11 If you'll remember, the coroner said that there was one bullet, well,
12 there was a bullet in the arm and there was a bullet in the neck area. They
13 were left to right, front to back. You're going to have pictures of the -- you're
14 going to have pictures. Now, when you look at them close you're going to
15 see Ken's bag sitting right there. That's Mr. Warrington's bag. It's propping
16 up the door. You're going to see glass on top of the bag. You're going to
17 realize that this window here, this storm door, that all the glass blew in. It
18 didn't blow out. You're not going to see any bullets over here. The
19 importance of that might be that the shooter was over here somewhere and
20 came around the walk and shot through the glass twice and then Mr.
21 Warrington fell, or, was falling and then was shot other times as well. But, the
22 order of events could be important as to someone's familiarity and ability to
23 walk around the house and be around the house without concern.

1 Again, remember there was blood in that footprint there. That was
2 never tested. We don't know if it's the blood of the assailant or if it's the blood
3 of Mr. Warrington. But, when you're in the jury room ask yourselves whose
4 blood is that. You don't know the answer.
5 They showed you a utility bill in the house. It was Markelus Carter's
6 utility bill, as if it had some significance, until they realized that Tarah just had
7 to take it to school to prove where she lived so that she was in the right
8 jurisdiction or whatever.
9 I'm winding down now. I guess my argument is like on that AEP
10 receipt. It looked some way until you just asked about it and then you
11 realized, oh, it's nothing. At first you would look at it and you would say, oh, it
12 looks like somebody took a bill and like left it. It's like a sign that they had
13 been there sort of thing. That's the way I saw it when I first saw it. Then you
14 start asking Sonya and she says, no, no, that's what it was for. You ask
15 Tarah and, no, no, that's all it was there for. They could do that with a lot of
16 these pieces of evidence. They could look at a camouflage t-shirt and say,
17 oh, there's a connection. Or, I could look at it deeper and say, well, maybe
18 there's not. If you go through each and every piece of evidence that the
19 government has in this case and look at it, the inferences, the different ones
20 that could be drawn, they don't necessarily point to anything in general.
21 Like Procrustus in these crossroads, to get to a verdict of guilty the
22 evidence has to be imagined and stretched. You can't take Rosalind Johnson
23 at her word on what she saw because then their physical evidence wouldn't

1 correspond to it. I could go on, and on, and on with that.
2 Look at Mr. Carter's tapes. They want to talk to you about his -- well, if
3 an officer comes up to me and says there's been a homicide at my home
4 address, or my mom's address, or whatever, my sister's address, or an
5 address where I know my child was that night, I don't know how I would
6 respond if I knew my daughter was there.
7 The first time an officer calls -- I mean, look at the Prosecutor's
8 argument on this first phone call. First they say, well, Markelus answered the
9 phone. Well, of course he is because he's trying to buy time. Okay. That
10 was their argument to you. Let's assume he hadn't answered the phone.
11 They'd say, well, he didn't answer the phone because he was trying to buy
12 time. So, anything that Markelus does is being spun to somehow mean he's
13 guilty. So, he answers the phone and says, "Hey, Godfrey." The first thing
14 out of his mouth is, "Hey, what new developments do you have on the case,"
15 or something to that effect. Now, that's a pretty -- if you were innocent that's
16 something you would say when an officer calls you if you've been dealing with
17 that officer for the last year and a half. The first thing out of your mouth -- "Do
18 you have a new development in this case?" It's consistent with innocence.
19 It's not buying time. It's not trying to deflect. He answers the phone quickly.
20 He answers it. He has his own -- well, what about this? The second time he
21 calls what does he say? He says, "I'll be there within an hour," or something
22 like that. He said he had to go drop off some Allstate insurance cards. All
23 right? So, that was the information the police have. So, the police, well, what

1 do they do? They start following him. Where does he go? If I'm guilty of
2 Aggravated Murder and I have a limited window because I think the police are
3 coming to get me, what am I going to do? Well, all sorts of things maybe.
4 The last thing I'm going to do is start delivering Allstate insurance cards.
5 When they stopped him, where was he? Two blocks away from the Allstate
6 insurance agent's house. When Detective Clark saw him, when he came to
7 just observe him at his house, he wasn't like shoveling things in and out and
8 trying to do things. He was under the hood just sort of tinkering with the car.
9 So, every time that they sort of got a snapshot of Markelus Carter on
10 February 23rd he was consistent with what he said he was supposed to be
11 doing. I mean, who kills somebody and within an hour's time or so starts
12 texting their daughter about their grades and starts complaining about how
13 they're getting D's and F's? That's a weird -- that would not make sense. It's
14 inconsistent with common sense. It's inconsistent. It's not just a neutral --
15 these are inferences, too. If this is more circumstantial evidence, fine. Draw
16 that. They want you to draw circumstantial evidence. If the answer is, "Hey,
17 Godfrey, do you have any new developments in the case," that's an inference
18 of guilt? "Hey, I'll be there in an hour. Don't worry. I just want to drop off
19 these cards real quick and then I'll be there." Then they come down on him.
20 He doesn't know they're going to come down on him when they come down
21 on him. It's consistent with what he told Godfrey.
22 Then they want to check his phone. They go get his phone, like they
23 don't believe he's texting his daughter at six something in the morning about

1 her grades. They get it and look at it and he scrolls down and he shows them
2 the whole thing. "Yea, here it is." I mean, he mentions that he was talking to
3 Faye on the phone. Would the police have discovered it? No. Markelus
4 says -- he tells them the whole thing. "Yea, I've got Faye's number in my
5 phone and I've been calling Faye to explain the situation to her."
6 The problem with circumstantial evidence is these inferences. You can
7 sit there -- and I watched all your faces during the Prosecutor's first argument.
8 You draw one inference and you start thinking. There's the next one and you
9 start thinking. There's the next one and you start thinking. The next thing you
10 know, you're ready to vote. But, if you start thinking about those inferences
11 the Prosecutor wants you to draw, well, they're not necessarily so. In fact,
12 they might even point in the opposite direction. Or, they might be so neutral
13 you'd say, well, maybe yes, maybe no; I really can't say. So, look at each
14 piece of evidence, please.
15 When Faye said she had numerous conversations with Markelus how
16 did she describe him? He was kind, calm. He wasn't off the hook.
17 What evidence do you have that Markelus was stalking Ken within the
18 two weeks before this, as they want you to believe? So, February, what, 9th,
19 to February 23rd. What evidence? Nothing. They want to show you the
20 pictures from January 9th and say, ah ha, this is evidence of stalking. Well,
21 he admitted also that what he was trying to do was show Faye so that Faye
22 would believe him that Ken was not at home and that he was staying over at
23 her house. Is that stalking? I mean, he's communicating to his wife in a kind

1 way. He communicated with Ken in a kind way. No one ever said there were
2 threats ever. The only threat, again, that ever came out in this case that you
3 ever heard about was Sonya threatening Mrs. Warrington. That's the only
4 threat we have.
5 Ladies and gentlemen, you're as smart or smarter than me. I'm
6 worried. I'm worried because the Prosecutor has thrown certain things before
7 you and said, well, this means this, and this means this, and this means this,
8 and then the twelve of you will go back there and say, well, it sure does and
9 we're going to find him guilty. For six years they've been investigating
10 Markelus. If you spent six years investigating, well, I was trying to think of an
11 analogy, anybody for anything you're going to come up with certain bits and
12 pieces that if you draw the right inferences from those bits and pieces you're
13 going to get the wrong impression. Think about that. If you took my last six
14 years and you wanted to prove, well, there's a whole host of things, and you
15 have a picture here, and a picture there, and even though
16 on each of those things it was completely innocent, but if you started drawing
17 this conclusion, and that conclusion, and that conclusion, and that conclusion,
18 well, I would be as worried as can be.
19 Carlotta, when asked by the Prosecutor, said this whole thing about
20 this alibi stuff. It wasn't meant by Markelus because he was guilty and he
21 was trying to create a falsehood to get out of it. Markelus Carter feels, and
22 felt, like the system wasn't going to give him a fair shake and he needed extra
23 help to do it. That rings true through his entire statement with the police. He

1 says, "I've given you everything that I have and it's not good enough." That
2 started back in 2007 and went up to the day that they arrested him for
3 Aggravated Murder in 2014.
4 The twelve of you, or, thirteen of you have been diligent. I thank you.
5 Markelus Carter and his family thanks you. I'm not allowed to get back up
6 and talk to you again. I'm not allowed to say when Mr. Miller gets up and tells
7 you his last thoughts on it, 'oh, but I have a great argument for this', or, 'wait a
8 minute, you have to think about that when you go back there'. The truth of
9 the matter is the twelve of you, in about a half an hour/fifty-five minutes time,
10 will be the most powerful people in Markelus Carter's life and probably ever.
11 You hold the responsibility of the verdict in your hands. So, please, when Mr.
12 Miller is up there and when you go back there, please think about this case
13 from the defense perspective as well. When you look through each piece of
14 evidence look for the strengths of it from the State's point of view, but look at
15 the weaknesses, too.
16 I genuinely thank you for your time and all the energy you've put into
17 this. We're asking for a verdict of not guilty on both counts. Thank you.
18 THE COURT: Thank you. Mr. Miller?
19 MR. MILLER: Thank you, your Honor.
20 Ladies and gentlemen, Mr. Rion, we have been here for two weeks.
21 Mrs. Kohrieser stood before you and did the jury selection and she had the
22 opportunity to do the first closing for the State. It's now my chance. Mr. Rion
23 had a chance to speak. It's now my chance to thank each and every one of

1 you for your time served here over the last two weeks. I sincerely appreciate
2 it and I echo Mrs. Kohrieser's statement on that subject and Mr. Rion's
3 statement on that subject. I know the Court appreciates it as well.
4 I want to focus your attention on the jury instructions. The Court is
5 going to tell you, after I'm done talking, the jury instructions are the law and
6 they are your guide while deliberating. Now, all of them are important. You
7 should read all of them. The Court is going to read all of them to you, as
8 you're going to see. But, I want to specifically point your attention to three
9 topics in the jury instructions. I'm going to mention those throughout my
10 statements here today.
11 The first topic is reasonable doubt. Reasonable doubt contains within
12 it -- the definition of reasonable doubt contains within it a clause. Not only
13 does the reasonable doubt definition tell you what reasonable doubt is, but it
14 tells you what it is not. "Reasonable doubt," right in the jury instructions you'll
15 read, "reasonable doubt is not mere possible doubt because everything
16 relating to human affairs or depending on moral evidence is open to some
17 possible or imaginary doubt." I want you, again, to read all of the jury
18 instructions. But, while you're deliberating, and particularly when you're
19 considering Mr. Rion's argument on various things, the evidence, various
20 pieces of evidence, I want you to keep that sentence in mind. Again, it tells
21 you what reasonable doubt is not. It is not mere possible doubt. That's the
22 first thing I want to direct your attention to as I go through my statement here.
23 The other part of the jury instructions I want to direct your attention to

1 deals with credibility of witnesses. It's about a page long, the entire thing. It
2 may even be a little more. Yea, it's a little more. The entire segment on
3 credibility is about a page long. But, at the bottom of the first page, and I
4 believe it's going to be page six in your draft, there is a paragraph that reads,
5 starting with the word 'also', "Discrepancies in a witness' testimony or
6 between his or her testimony and that of others, if there is any, does not
7 necessarily mean that you should disbelieve that witness as people
8 commonly forget facts or recollect them erroneously after the passage of
9 time. In considering a discrepancy in a witness' testimony you should
10 consider whether such discrepancy," and this is important, "you should
11 consider whether such discrepancy concerns an important fact or a trivial
12 fact." I want you to keep that in mind not only as I make my statement, but
13 also as you consider the argument from the defense while you deliberate.
14 Finally, the third jury instruction deals with circumstantial evidence. In
15 voir dire, you know, there was a discussion by both parties about
16 circumstantial evidence. Circumstantial evidence, as you're going to find
17 when you read the jury instructions, is to be given equal weight with direct
18 evidence. Now, I want to stop before I go on with this for a second. Mr. Rion,
19 in his argument, cautioned you about making certain inferences - he used that
20 word - inferences from the evidence, the circumstantial evidence. We have
21 readily admitted that this is a circumstantial case. But, keep in mind that
22 circumstantial evidence is to be given equal weight to direct evidence. Now, I
23 go back. Mr. Rion cautioned you on making certain inferences from the

1 circumstantial evidence. But, what you're going to find actually is that the
2 jury instructions actually tell you that that's okay. Here it is. "Circumstantial
3 evidence is the proof of facts or circumstances by direct evidence from which
4 you may reasonably infer other related or connected facts which naturally and
5 logically flow according to the common experience of mankind." It actually
6 uses the word "infer". You may reasonably infer other related or connected
7 facts. You may do that.
8 So, with those in mind, with those three portions of the jury instructions
9 in mind, let's take a look now at Mr. Rion's argument. Okay? Now, Mr. Rion
10 talked about the G.S.R. on the clothes. How did it get there? Well, he posed
11 a number of possibilities. Okay? Now, I'm going to paraphrase. I'm going to
12 just sort of capture them in bullet points. Okay? I do not wish to misrepresent
13 his argument in any way. These are my bullet points on what he argued.
14 First, the gunshot residue ended up on not one, not two, but three articles of
15 clothing found in Markelus Carter's home because police officers who either
16 cleared the home for anybody else in it with their weapons drawn or the police
17 officers doing the search transferred that G.S.R. from their hands to these
18 articles of clothing. He put up for quite awhile a picture of Mr. Clark holding
19 what appeared to be a gun case with his bare hand as evidence that, well,
20 there you go. Okay? There you go. Here it is. That somehow proves that
21 the officers transferred gunshot residue to these articles of clothing.
22 However, if you actually listened to the testimony and when you consider it
23 the testimony was that Detective Clark did not collect any evidence. Now, Mr.

1 Rion mentioned Don Marik's name. That wasn't Don Marik's hand in that
2 picture. It was Mr. Clark's. Okay? In any event, you have to consider
3 whether or not this possibility, this possibility, is it possible that the officers
4 transferred gunshot residue from their hands and, by the way, there was no
5 evidence that any officer had fired a firearm at any point close to the time that
6 they did the search. None. No evidence of that. Is it possible anyway that
7 the officers transferred gunshot residue from their hands to these clothes?
8 Well, anything is possible; right? But, the jury instructions say that that does
9 not raise to the level of reasonable doubt. Mere possibilities, in other words,
10 possibilities detached from evidence, those that are simply floated, does not
11 rise to the level of reasonable doubt. Why? Because anything is possible.
12 The jury instructions actually guard against that sort of argument, the
13 argument that anything is possible.
14 Mr. Rion also said, "Well, maybe that gunshot residue got on those
15 clothes," not one article, and not two articles, but three articles of clothing
16 collected from the defendant's house, "got on those clothes at the Police
17 Station." Maybe. Maybe. Okay, now we have two possibilities. I would
18 submit to you that the more possibilities we have the more likely it is that each
19 one of them is a mere possibility. Okay? Well, maybe. Maybe. Maybe isn't
20 good enough. Maybe doesn't get you to reasonable doubt. The jury
21 instructions tell you that.
22 MR. RION: Objection, your Honor. He's
23 reversing the burden of proof. Maybe doesn't get you reasonable doubt is

1 reversing the burden of proof in the case.
2 MR. MILLER: I'm speaking directly to the
3 jury instructions that talks specifically about mere possible doubt.
4 THE COURT: Okay. The statement you
5 just made I'll sustain and tell the jury to disregard. But, continue.
6 MR. MILLER: Okay.
7 THE COURT: The State has the burden of
8 proof.
9 MR. MILLER: The State does have the
10 burden of proof. The point is, mere possibilities do not get to reasonable
11 doubt. The same relates to the possibility that Mr. Carter touched one of
12 those firearms and transferred the gunshot residue to the articles of clothing.
13 Mr. Carter says in his statement to Detective Kileman that Mr. Carter has not
14 fired a firearm since New Year's Eve of 2006. So, it is not reasonable to
15 believe that any of those firearms had been fired by Mr. Carter at any point
16 close to the time that those clothes were found.
17 So, let's take a look at an evidence based explanation as to how the
18 gunshot residue got on those articles of clothing. We'll pick up the story at
19 the time that Mr. Carter is at 436 McKibben waiting on Mr. Warrington. Here's
20 an explanation. We heard about the jacket that Rosalind Johnson saw with a
21 hood. We know that there's gunshot residue on two articles of clothing that
22 have camouflage on them. We also know that there's gunshot residue on the
23 gloves. Mr. Carter, waiting on Mr. Warrington, has the coat that was

1 described by Miss Johnson open. Why can we suppose that? Well, take a
2 look at those gloves. Those gloves are not -- they're pretty thick. Okay?
3 You're not going to use them to unzip any zipper. Not only that, but if you
4 think back to what Sonya said, Sonya said that Mr. Carter often carried his
5 firearm in his waistband. So, he's waiting. He shoots Mr. Warrington.
6 Gunshot residue not only gets on the outer coat, but because the outer coat is
7 open it gets on the inner coat, or, on the long-sleeved t-shirt. It also gets on
8 the gloves. All right?
9 Now, we've heard testimony that Mr. Carter is a smart man. Carlotta
10 talked about that. He helped her quite a bit with business. He was good with
11 computers. He knows that he has got to get this scene cleaned up. He then
12 sets about picking up the shell casings because there's only two shells
13 casings. There's at least six shots, and I would submit a seventh that went
14 into the freezer that you've all seen. He cannot do that with those gloves on.
15 If you take a look at the gloves, they're fairly thick. You're not going to pick up
16 those small shell casings with the gloves on. He takes off the gloves. Before
17 he does that he takes the firearm that he just shot with and he puts it in his
18 waistband.
19 Now, there's already gunshot residue on one t-shirt because of the
20 firing of the gun. But, he has to lift that t-shirt to put the gun into his
21 waistband at which time, I submit to you, that it is possible, as Mr. Congleton
22 testified, to transfer the gunshot residue on that firearm to the undershirt that's
23 underneath. If you lift a shirt and you have one underneath it's entirely

1 possible that you only lift one and you slip it into your waistband. He then
2 begins to pick up whatever bullets he can find. He then begins to pick up
3 whatever casings he can find. But, there's a problem. The problem is that
4 unbeknownst to him Mr. Hovest is at the location that Mr. Hovest pointed out
5 on Pearl Street. Now, why is that a problem? That's a problem because, as
6 Detective Clark testified, it only takes a few seconds, I believe it was forty
7 seconds, to travel around Mr. Hovest's travel. He traveled eastbound on
8 Pearl, northbound on Liberty, and westbound down McKibben directly
9 towards 436 McKibben. It was dark. That's a problem for Mr. Carter because
10 Mr. Carter now can see Mr. Hovest coming and can probably hear the truck
11 coming. He gets what he can get and he goes. What does he do with the
12 gun, and those gloves, in his waistband? He does what someone naturally
13 would do and what Miss Johnson described. He takes those objects that he
14 has and he puts them into his pocket, that hooded jacket, and he walks away.
15 He walks the direction that Miss Johnson described up the alley and down
16 Pearl. Now, that explains a number of things. That explains why there was a
17 limited number of shell casings there and why some of the bullets are picked
18 up. Remember - each one of these shots were through and through. In other
19 words, they passed directly through his body, Mr. Warrington's body. It also
20 explains how that gunshot residue got on those shirts while Mr. Carter wore a
21 coat.
22 Now what does he do? Here's a couple of options. He either got in
23 the car, that SUV we've seen, and if he were to do that, remember, his hands

1 were gloved, but if he were to do that he might have, he might have some
2 gunshot residue on his hands from those shell casings. Probably not the
3 bullets because the bullets passed through the body. But, he might have a
4 little bit from the shell casings. But, what did Mr. Congleton tell you?
5 Gunshot residue does not stick very well to smooth surfaces. So, he's got the
6 shell casings in his pocket and he does not put the gloves back on because
7 he doesn't need to and he gets to his car and opens up the car and gets in
8 and drives away. Now, there was not gunshot residue found on that car.
9 True. But, Mr. Congleton told you that the gunshot residue does not stick to
10 smooth surfaces. If there was any on Mr. Carter's bare hands and then
11 transferred to that door handle it probably wouldn't stick to that door handle.
12 If it did, it may have blown away in the wind as Mr. Carter drove.
13 MR. RION: Objection. That was not the
14 expert's testimony.
15 THE COURT: Well, the jury can remember
16 what the testimony was. This is argument. It's not evidence.
17 MR. MILLER: That is an evidence based
18 logical explanation for how the gunshot residue got on those articles of
19 clothing.
20 Now, after he leaves the scene Mr. Carter, given the time frames that
21 Mr. Clark gave you, has plenty of time, plenty of time, to get rid of the jacket,
22 the paintball mask, which explains why there's no gunshot residue on his
23 face, and he has plenty of time to get rid of the shell casings and the bullets.

1 That doesn't take long. He also has time to get rid of the gun. He goes
2 home. By this time, and remember what time those shots fired, or, that shots
3 fired call went out, about five-eighteen, and remember what time Mr. Carter
4 told Detective Klemman that he got Markie up for school. By the time he gets
5 home he's got to get Markie up for school. He said in his statement, "I always
6 do that." So, he takes off those two t-shirts and he takes off the gloves and
7 he sets about getting Markie to school thinking that he has all the time in the
8 world because he cleaned up after himself the best he could. If Mr. Hovest,
9 whose name he doesn't know, but if the guy in the car who startled and saw
10 him, he's gotten rid of everything that could possibly have identified him that
11 Mr. Hovest may have seen.
12 But, he has another problem. Mr. Carter has another problem - that
13 AEP bill. That AEP bill is a really big problem for him. He doesn't even know
14 it at this time. He doesn't know it, but that AEP bill links him to the shooting.
15 You've heard Patrolman, and now Sergeant, Hile describe how he saw that
16 AEP bill and relayed that information to the detectives who then, well, one
17 thing led to another and they started to track down Markelus Carter. The
18 detectives got on top of Markelus Carter before he ever thought they would.
19 He did not have time, as he thought he would, to get rid of these articles of
20 clothing before they were found during that search warrant. That's a
21 reasonable explanation, an evidence based explanation as to how gunshot
22 residue got on the clothing and how it was found by the police officers.
23 Now, Mr. Rion also talks about Mr. Upham and Mr. Upham lying. Well,

1 he argues that Mr. Upham is lying because he can't remember details. He
2 just can't remember details. This really -- my next point goes to a number of
3 witnesses who could not remember details - Joey Moore, Sonya, Krista
4 Bodiker. I mean, we've heard the details. Mr. Rion says, "Hey, look, they
5 can't remember these details so they must be lying." Well, again, if you look
6 at credibility in the jury instructions it allows for that. I read that portion. That
7 does not necessarily mean they're lying. Here is the problem with Mr. Rion's
8 argument on details. You know, it's entirely possible to ask somebody
9 general questions about a long ago event. You ask those general questions
10 and then you narrow those questions to specific questions until the person
11 cannot remember that specific question, or, the answer to that question. For
12 example, I may ask someone who has been in this Courtroom for the duration
13 of this trial, "was Mr. Clark in the Courtroom last Thursday?" Well, yes, he
14 was. "Was he wearing a suit?" "Yes, he was". "Was he wearing a tie?" "Yes,
15 he was". "Was he wearing a blue tie?" "Well, yes he was". "Did it have a
16 design?" "Yes". "What was the design?" "It was striped". "Are you sure?" "Oh,
17 yes, I'm sure". Yes. Then I can take out a picture and I can show it to that
18 person and I can say, "ah ha, I got you, Mr. Clark had a red tie on with dots".
19 Here's the problem with Mr. Rion's argument with respect to those sorts of
20 things. Mr. Rion then argues that the answers to the general questions are
21 not credible because the witness couldn't answer specific questions. The
22 problem with that is, well, that's not how our minds work. We remember
23 general things. We may not remember the specific things. It does not mean

1 that the answers necessarily are not credible, those answers to the general
2 questions. The jury instructions specifically speak to that point in the
3 paragraph under credibility that I read to you. Don't get distracted with that
4 sort of thing.
5 The other thing is that with all of these witnesses that Mr. Rion argues
6 you can't trust because they can't remember specifics, the other thing about
7 that is you have to ask yourself a question with respect to those specifics.
8 Okay? Is what they can't remember, is that an important fact or a trivial fact?
9 For example, the light on the shed. Why did the light on the shed even come
10 up? The light on the shed came up because Sonya said that the light came
11 on the morning of the murder. Okay? Was she correct about that?
12 Apparently not. Now Mr. Rion argues that you can't trust her because of that
13 very specific detail. Well, you have to ask yourself - is that light coming on an
14 important fact in the entire consideration as to whether or not Mr. Carter killed
15 Mr. Warrington? Is that important? Or, was that just something trivial? Time
16 and time again we get into these specific questions that folks can't answer
17 from long ago and, therefore, you're asked to conclude that the more general
18 testimony is not reliable. I submit to you that that is a false argument and you
19 should not get distracted with that.
20 Another example - okay - Joey Moore's statement that Mr. Carter said
21 to him that Mr. Carter smoked the bitch. Okay? The important thing there is
22 what Mr. Carter said, and not necessarily whether Joey Moore was confused
23 as to exactly what Mr. Carter meant by that. Is it really an important fact or is

1 it a trivial fact as to what Mr. Moore thought Mr. Carter meant? Is the
2 important fact the more general one and that is that Mr. Carter told Mr. Moore,
3 'I smoked the bitch'?
4 We get into the same thing with Krista Bodiker. Krista Bodiker testified
5 that she saw blood on Sonya's face the night of December 17th, 2007.
6 Okay? Let's assume for the sake of argument she was wrong about that. Is
7 that an important fact or a trivial fact? Does it really make any difference as
8 to whether or not the more general facts testified to by both Krista and Sonya
9 were true as to what happened the night of December 17th, 2007? Again,
10 don't get caught up in confusion as to what's trivial and what's important.
11 Now, Sonya. Mr. Rion said that Sonya was the only one that
12 threatened someone. He said a number of other things that would lead to the
13 implication that maybe Sonya was responsible for this murder. One of them
14 was that it was somebody familiar with the surroundings because, you know,
15 maybe somebody walked around this way from the house and shot from this
16 direction and, you know, the glass is laying here. Come on. Look, to believe
17 that Sonya killed Mr. Warrington you would have to believe the following. You
18 would have to believe that Sonya woke up that cold morning, after apparently
19 being drunk the night before as her daughter says, got out of bed and got a
20 gun, that after numerous witnesses were questioned no one saw, waited on
21 Mr. Warrington to come home and shot Mr. Warrington and went back in the
22 house and got rid of the gun and went to bed and woke up early and got
23 Tarah up early and ran around the house looking for Mr. Warrington and

1 opened up the door and faked the hysteria that you heard on the 9-1-1
2 call. You heard that. You could hear in the background Sonya. You could
3 hear Tarah say, "Sit down, mom." You could hear that. But, she faked that
4 and then allowed Tarah to call the police to her own murder scene and
5 somewhere in the mix of that put on camouflage clothing that just happens to
6 look like that clothing that was found in the defendant's house and walk down
7 the alley just seconds after the gunshots were heard by Rosalind Johnson
8 and walk down Pearl Street. Now, if you get that far, then what you have to
9 do is you have to take all of this evidence against Mr. Carter and dismiss it
10 totally. I submit to you that the idea that Sonya Burkholder killed Ken
11 Warrington is beyond belief.
12 Also with respect to Sonya Mr. Rion brings up the idea that she was
13 with a lot of other men. Well, we know of one other than Mr. Warrington and
14 that would be Agruello Harris. Okay? I don't know that there was any
15 evidence of a lot of other men. But, again, even assuming there were other
16 men, is it just a mere possibility that some other man did this? Because a
17 mere possibility does not rise to a level of reasonable doubt.
18 MR. RION: Objection, your Honor. It's
19 shifting the burden.
20 THE COURT: The Court will remind the
21 jurors, and I'll tell you in the instructions, it's the State's burden to prove.
22 MR. MILLER: Kenny Whitney. Mr. Rion
23 would ask you to believe that somehow Kenny Whitney is not a credible

1 witness. Well, we get back to this general question and specific question
2 thing. Here's an instance, and I'm going to bring this up for a reason, but
3 here's an instance where that backfired on the defense and it really proves
4 the defense's argument to be a false argument. Why? Because there's a
5 reasonable explanation sometimes as to why people can't remember specific
6 things. Here's the line of questioning that happened. Mr. Rion questioned
7 Mr. Whitney about the box of ammunition. "Mr. Whitney," it went something
8 like this, "Mr. Whitney, how many rounds are in that box?" "Well, there's
9 seven." "Are you sure?" "Yea, seven." "Are you sure?" "Oh, yea, I'm sure."
10 "Mr. Whitney, open up that box of ammunition." He opens it up and there's
11 only five. It appears like a gotcha moment because we went from a bunch of
12 general questions about Mr. Whitney's involvement in the search and then we
13 got down to the specific one, the one specific one about the ammunition and
14 Mr. Whitney can't remember. What can't he remember? He can't remember
15 what was later shown and that was that two of those rounds were used by
16 B.C.I. to do the ballistics testing on the Glock. Okay? That is a bright and
17 shining example of why you cannot say that just because someone can't
18 remember very specific things that their entire testimony is not credible.
19 There may be a very reasonable explanation as to why they might be wrong
20 about a specific question, or, an answer to a specific question. That is a
21 perfect example.
22 Now, the defense argues that Sonya is lying. Upham is lying. Moore
23 is lying. To a certain extent, Krista Bodiker is lying. Others are lying.

1 Everybody is lying. Everybody is lying about this evidence that you will
2 consider. Why would everybody be lying about Mr. Carter? These people,
3 most of them, are completely disassociated with each other. For example,
4 Sonya doesn't know Joey Moore. Joey Moore doesn't know Krista Bodiker.
5 Upham doesn't know any of them. Carlotta doesn't know any of them. But,
6 everybody is lying. They're all lying about the same thing. They're all lying
7 about Mr. Carter committing this crime. They're not lying.
8 Mr. Rion brought up the coroner's testimony. Again, back to this idea
9 that maybe Sonya did it. I've touched on that. He gave you a scenario as to
10 how maybe Sonya did it. But, here's the coroner's testimony - it is very clear
11 as to how this happened. Here's how it happened. I want you to think back
12 to her testimony and what she said about those shots and where they hit on
13 the body and the angles. Here's the scenario that's evidence based. Mr.
14 Warrington goes up to that door and he has his bag and his cooler in his left
15 hand and the keys in his right hand. He props open that storm door with his
16 left arm, with the bag and cooler in hand, and puts the keys in the door. At
17 that moment a shot goes whizzing by his head. That's the one that goes into
18 the cooler. Okay? Now, naturally he would crouch. Mr. Carter adjusts his
19 aim because of the crouch. He adjusted it a little too much and he shoots Mr.
20 Warrington in the right hip. You saw that injury. That sends Mr. Warrington
21 down to his right knee, his right leg. That's how that blunt force trauma gets
22 on to his right leg. At the same time Mr. Warrington spins and he turns to
23 look at who is shooting at him. When he does that he turns to his right and he

1 puts his right arm up and his left arm up and at which time Mr. Carter shoots
2 again. The bullet goes through his chest. Remember, all of these are
3 through and through injuries. At this point think about the position. If he's
4 walking into the house this way and he goes down to his right knee and he
5 spins on that right knee he's low. He's now facing the shooter and turning
6 away because he sees the gun. It goes through his chest and possibly right
7 through that glass window. Arms are up. Another shot comes. It hits him in
8 the forearm. He spins away even more, exposing his chin. He gets the shot
9 in the chin. He spins away even more. He gets the shot in the lower back
10 twice. By this time he's facing back in his original direction and hits the
11 ground on his left side, causing the blunt force trauma on his left side. Now,
12 all of these injuries are through and through which means bullets would go
13 through his body and ping off of that door, and we saw all the divots in the
14 door and we seen the divots in the cement, which would scatter bullets
15 everywhere and which would, by the way, make it much harder for Mr. Carter
16 to pick up those rounds as he's looking for them before Mr. Hovest interrupts
17 the project. Okay? Now, if you don't buy that, take a look at the picture of the
18 door at the crime scene. What you will see is that most of the blood on that
19 door is below the door handle, the door knob, suggesting that most of those
20 rounds went through Mr. Warrington's body as he was low. Sonya didn't
21 shoot him. The evidence proves Mr. Carter shot him in some similar manner
22 as I've described.
23 Now, did the shots come from over here where the screen door was

1 swung open, as Mr. Rion suggested? No, they did not. They came, if I'm
2 going into the door, they came from the back right of Mr. Warrington. How do
3 we know that? Because if you look at the cement pad where the murder
4 happened there's two shell casings found by the police officers to Mr.
5 Warrington's back right, suggesting that that was where the shooter was
6 because you heard Mr. Kramer explain how a semi-automatic weapon
7 operates. It expels the shells, or, the casings onto the ground. So, we can
8 get a very good idea as to where the shooter was. He wasn't over here.
9 shooting through the screen door, or, the glass door that was propped open.
10 The casings were found over here.
11 Now, Mr. Rion makes a point here about familiarity with the house. I
12 agree. I agree. I agree that whoever did this probably plotted and planned
13 and probably took time to get an idea of the surroundings of that house, the
14 layout of that house, where he might hide, where he might walk out, and
15 where he might walk in. I would submit to you that the evidence actually
16 proves that Mr. Carter got familiar with those surroundings by looking at the
17 Internet. You've all seen the evidence from the Auditor's website that Mr.
18 DeLong found.
19 Mr. Rion puts out the hypothesis that somebody else did this because
20 there's blood in a footprint in the snow. Is that blood in a footprint, or is it just
21 merely possible that's blood in that footprint? We don't know that. In any
22 event, how do we know it's not 'Markelus' footprint? The point is, we don't
23 know.

1 There are things we do know from the evidence. Motive. Again, back
2 to Sonya and the idea that Sonya did this. Did Sonya really have motive to
3 do this, or did the defendant? Let's think about the defendant's motive
4 because whoever did this had motive. This wasn't a robbery. It wasn't some
5 random event. They had motive. Let's think about that motive. Who had the
6 motive in this case? Mr. Carter. Mr. Carter had the motive because on
7 December 17th, 2007, like I said, a watershed event happened. A standoff.
8 Why is that a watershed event? Because it was at that time that Mr. Carter
9 began to lose control. Control over whom? Well, to a certain extent, Sonya.
10 Okay? But, the control over her was just incidental. He didn't like her. You
11 could hear that. You could hear that in the standoff phone calls, how he talks
12 about her. Disloyal. That's probably because he took her in and then was
13 seeing other men. Dishonest. Dishonorable. She's not welcome in this
14 house. He threw her out. So, I don't think it was really control over Sonya,
15 per se. But, what happened after that night? Well, during that standoff and in
16 the immediate hours afterwards the kids stayed in the house. I said during
17 my opening don't lose sight of the kids. The kids stayed in that house on
18 December 17th, 2007. But, what happened after that? I'll summarize.
19 You've all heard it. Soon thereafter Sonya leaves 122 -- well, she was kicked
20 out of 122 East Eureka. But, that night the kids stayed there. Soon thereafter
21 she went to live with the Bodikers. Who went with her? The kids. That could
22 not have sat well with Markelus. Why? Because we heard Carlotta testify
23 and we heard Tarah testify that he was very close with his kids. He was the

1 disciplinarian. He made sure Markie got up for school. In his interview with
2 Detective Klemman he said several things about his kids. One of them had to
3 do with Tarah. "Tarah's becoming too much like her mother, but when I talk
4 to her she listens." The point is this - Markelus wanted his kids raised the
5 way Markelus wanted them raised. Not necessarily a bad thing unless you
6 take it too far. Now, he hated Sonya and the thought of those kids going with
7 Sonya was unbearable because she was dishonorable, she dated married
8 men, she was disloyal, and she was undisciplined. Again, listen to those
9 phone calls. Listen to what he says about her in his statement to Detective
10 Klemman. So, after that night they stayed with the Bodikers for nine months.
11 Then Sonya gets her own house. Now, Markie, at some point, goes back
12 home to live with his dad. But, Tarah stays with mom, who he despises.
13 Now, again, Carlotta, the defendant's own words, when you listen to
14 that testimony and you hear his own words, well, Tarah's a concern. Sonya
15 even talked about it. She was a little more wild - I use that term, but I don't
16 know if wild is the right word - she may have just been a kid. That might not
17 be the right word. Let's put it this way - Markie toed the line more than Tarah
18 did. Now, after December 17th, 2007, his daughter is living with Sonya, again
19 who he despises, who's dating a man who is married, and that is not the
20 example he wants to set for his kids. The motive for this is not control over
21 Sonya. Controlling Sonya while she lived at 122 East Eureka was just
22 incidental to making sure his kids got raised right. He wanted to know where
23 Sonya was after work. He wanted to control her access in and out of the

1 house. He monitored her e-mails.
2 DEFENDANT: She was a thief.
3 MR. MILLER: He monitored her e-mails.
4 This was all in an effort to keep up with what she was doing so that she did
5 not put undue influence over his kids. But, now, after December 17th, 2007
6 she's breaking free. She's breaking free with the kids. This is all, not to
7 mention the fact that she filed a C.P.O. soon thereafter that night that first
8 included the kids. Unacceptable. So, after that night while
9 Sonya was breaking free with the kids he then sets about to regain his
10 control. How does he do that? He does it by doing a number of things.
11 You've heard it. He calls out to Husky. He calls Husky on sort of a fake
12 phone call, posing as a private investigator, in an effort to influence Husky
13 and Sonya's employer because, remember, she wasn't employed by Husky.
14 But, he let them know that something was going on that was not within the
15 company policy. Why would he do that? He would do that because if either
16 one of them would get fired it would disrupt this relationship. Why is this
17 relationship such a threat to him? Why is he so concerned about it?
18 Because Sonya has, in his mind, a reputation of hanging around with
19 disreputable men and Ken Warrington was married. That's not the type of
20 man I want my kids raised around. I've got to break up this relationship. That
21 doesn't work.
22 So, what does he do then? He does a number of other things. He
23 begins to call Faye, accelerating his calls to Faye. Why does he do that?

1 Because if he calls Faye and is either such a big nuisance to Faye or scares
2 Faye, well, Faye may go to Ken and say, 'Ken, you've got to stop this'. That
3 is an effort to enlist Faye's help in him regaining control of not just Sonya, but
4 through Sonya, his kids and breaking up this relationship. That doesn't work.
5 Ken Warrington is not going away.
6 Now, at the same time, he launches into another attempt to break up
7 this relationship. He goes down to the Lima Police Department and says that
8 he wants charges filed against Sonya because Sonya obviously lied about
9 this 2007 incident. "She obviously did because my daughter, who I brought
10 up to the Police Station, told you that." Well, what you know is that he
11 continued to call the Lima Police Department in an effort for the Lima Police
12 Department to follow through with his wishes for charges to be filed against
13 Sonya. Why? Because if Sonya would go to jail, or some other action taken
14 against Sonya, then he could somehow use that to get control back over the
15 kids and maybe even break up this relationship. All these are attempts during
16 this time frame to regain control.
17 Now, another watershed moment happens, actually two of them
18 happen pretty close, and one of them is, one of them is Mr. Godfrey telling
19 Mr. Carter, "We're not doing anything with those charges." Well, if you don't
20 think that made Mr. Carter mad go back and look at his interview with
21 Detective Klerman because right near the end the conversation shifts to that
22 2007 incident and Mr. Carter becomes extremely angry about that situation.
23 The other thing, the other thing that happens, and Mr. Carter talks about it in

1 his statement to Detective Klemman, Mr. Carter learns, and whether it's true
2 or not doesn't matter, but he believes, because he tells Detective Klemman,
3 that Ken Warrington has bought Sonya a ring. Why is that important?
4 Because now not only has his efforts to regain control and split up this
5 relationship, well, not only have they failed, but this relationship seems to be
6 getting stronger because now, in his mind, they're going to get married. So,
7 you've got two events coming together right near the day of the murder.
8 That's the motive. Now with all of his efforts falling apart
9 and apparently the relationship getting stronger and Sonya being Sonya and
10 having, you know, shared parenting, I suppose, with him because you heard
11 Tarah, "I spent half the week with dad and I spent half the week with mom,"
12 and then you throw in there that Mr. Carter heard Mr. Warrington tell Tarah
13 you know, that her mom shouldn't be vacuuming the floor, that she should be
14 vacuuming the floor, well, how do you think that sat with Mr. Carter? Not very
15 well. That's the motive. It's not some mere possible motive Sonya did it.
16 Now, Carlotta. Mr. Rion said something with respect to Carlotta and
17 this is very important. He said -- Mr. Rion suggested that Mr. Carter was not
18 trying to set up an alibi because he was guilty, but because maybe he was
19 innocent and this alibi was true.
20 MR. RION: Objection. That's not what I
21 said.
22 THE COURT: It's just argument. The jury
23 will decide what the evidence is. Overruled.

1 MR. MILLER: Well, if the alibi were true, if
2 the alibi were true Mr. Carter would have told Detective Klemman about
3 Carlotta the day of the murder because when you go back and you look at
4 that interview tape Detective Klemman specifically asked Mr. Carter if he did
5 this murder and Mr. Carter adamantly denies it. "No. No. I didn't do it." He
6 did not say, "No. No. I didn't do it. Go talk to Carlotta." He never mentioned
7 Carlotta. Why not? Because he hadn't set up the alibi yet. Remember what
8 Carlotta said. Mrs. Kohrieser told you what she said. The morning of the
9 murder he was calling Carlotta. He couldn't get ahold of Carlotta. He wanted
10 Carlotta to come down to the jail after that. She wouldn't come down to the
11 jail after that. His mother, Mr. Carter's mother, went to get Carlotta. She told
12 her it had to do with David Evans. That got Carlotta down to the jail. Then
13 the note went up on the window. See, the alibi hadn't been set up yet. If it
14 were true he would have told Detective Klemman right then and there - 'go
15 check with Carlotta'. He didn't.
16 Finally, Mr. Rion, right near the end of his remarks to you, mentioned
17 that this investigation has taken six years. That's true. That is true. We've
18 been here for two weeks going over six years worth of investigation. But, on
19 the other hand, Mr. Rion wants to argue that there are all of these other
20 possible people out there that could have done this and it was some sort of
21 rush to judgment based on lies from people who are disassociated with each
22 other to pin this on Mr. Carter. You can't have it both ways. You can't, on the
23 one hand, say this is a rush to judgment, bad investigation, poorly done, you

1 know, failed to investigate other possible suspects, you can't say that and
2 then on the other hand say that they took six years. It has taken six years.
3 After six years, after an investigation for that period of time, and after two
4 weeks of presenting evidence, as I told you in my opening, justice is going to
5 speak one name and that name is Markelus Q. Carter.
6 DEFENDANT: Not guilty.
7 MR. MILLER: Markelus Q. Carter had the
8 motive. He had the opportunity. He killed Ken Warrington after he could not
9 regain control.
10 THE COURT: Okay. That concludes the
11 closing arguments. We're going to take a short break and then I have to read
12 the instructions to you. That's going to take some more time. That's why
13 we're going to take the break now. It's very important, as it always has been,
14 especially now, I'm sure, as we all, well, you folks would be the same way,
15 you want to get started but you can't get started on your deliberations until
16 you have the instructions. The instructions are an important part of the case
17 that you have to get before you start making any conclusions, or deliberating,
18 or expressing opinions, or formulating opinions. So, remember that
19 admonition.
20 Don't have any contact with anybody. We'll go for fifteen minutes. So,
21 that's roughly twenty till. I'll give you the instructions and then the case will be
22 yours. So, we'll stand in recess for fifteen minutes. I want counsel to stay
23 here for just a second.

1 (WHEREUPON, JURY WAS EXCUSED FROM THE COURTROOM.)
2 THE COURT: The jurors have left the
3 Courtroom. Just quickly, you may have noticed that I was passed something.
4 These are the certified copies of your entries. So, they are 'II'?
5 MRS. KOHLRIESER: Yes.
6 THE COURT: You're right - the
7 handwriting is pretty bad.
8 MRS. KOHLRIESER: They should be 'II'.
9 THE COURT: 'II'.
10 MRS. KOHLRIESER: The Stephen
11 Upham ones?
12 THE COURT: It's 'II'. So, that will be put
13 in there as the exhibit. That's one thing I wanted to make sure because you
14 may have seen something being passed. I just wanted to make sure of that.
15 Okay. That was it.
16 MRS. KOHLRIESER: Okay. Thank you.
17 (WHEREUPON, COURT WAS IN RECESS.)
18
19 THE COURT: For the record, we're
20 reconvening in CR2014 0139, State of Ohio -vs- Markelus Q. Carter. The
21 defendant is present with his attorney. The State is present. The jurors have
22 returned.
23 Members of the jury, you have heard the evidence and the arguments

1 of counsel. The Court and the jury have separate functions. You decide the
2 disputed facts and the Court provides the instructions of law. It is your sworn
3 duty to accept these instructions and to apply the law as it is given to you.
4 You are not permitted to change the law or to apply your own conception of
5 what you think the law should be.
6 A criminal case begins with the filing of an indictment. The indictment
7 informs the defendant that he has been charged with an offense or offenses.
8 The fact that it was filed may not be considered for any other purpose. The
9 plea of not guilty is a denial of the charges and puts in issue all the essential
10 elements of the offenses.
11 If, during the course of the trial, the Court has said or done anything
12 that you consider an indication of the Court's view of the facts you are to
13 disregard it.
14 The defendant is presumed innocent until his guilt is established
15 beyond a reasonable doubt. The defendant must be acquitted unless the
16 State produces evidence which convinces you beyond a reasonable doubt of
17 every essential element of the offenses charged in the indictment.
18 The defendant in a criminal case is not required to present any
19 evidence. If, after considering the evidence as a whole, you have a
20 reasonable doubt as to the defendant's guilt, you must find him not guilty.
21 Reasonable doubt is present when, after you have carefully considered
22 and compared all of the evidence, you cannot say you are firmly convinced of
23 the truth of the charge. Reasonable doubt is a doubt based on reason and

1 common sense. Reasonable doubt is not a mere possible doubt because
2 everything relating to human affairs or depending on moral evidence is open
3 to some possible or imaginary doubt. Proof beyond a reasonable doubt is
4 proof of such a character that an ordinary person would be willing to rely and
5 act upon it in the most important of the person's own affairs.
6 If, after a full and impartial consideration of all of the evidence, you are
7 firmly convinced of the truth of the charge the State has proved its case
8 beyond a reasonable doubt. If you are not firmly convinced of the truth of the
9 charge you must find the defendant not guilty.
10 Evidence is all the testimony received from the witnesses and the
11 exhibits admitted during the trial and any facts which the Court requires you to
12 accept as true.
13 The parties have stipulated to certain facts. You are instructed that
14 matters to which the parties have stipulated should be accepted by you as
15 true.
16 Evidence may be direct, or circumstantial, or both.
17 Direct evidence is the testimony given by a witness who has seen or
18 heard the facts to which he or she testifies. It includes exhibits admitted into
19 evidence during the trial.
20 Circumstantial evidence is the proof of facts or circumstances by direct
21 evidence from which you may reasonably infer other related or connected
22 facts which naturally and logically follow, according to the common
23 experience of mankind.

1 To infer, or to make an inference, is to reach a reasonable conclusion
2 or deduction of fact which you may, but are not required to, make from other
3 facts which you find have been established by direct evidence. Whether an
4 inference is made rests entirely with you.
5 Direct evidence and circumstantial evidence are of equal weight or
6 probative value. The sufficiency of circumstantial evidence to prove a fact or
7 to prove guilt depends, among other things, on whether reason and common
8 sense lead you from the facts proved by real or direct evidence to the fact
9 sought to be proved. If you determine that the connection between what is
10 proved and what is sought to be proved is strong enough to support a finding
11 of proof beyond a reasonable doubt, the circumstantial evidence is sufficient.
12 On the other hand, if that connection is so weak that you cannot say the fact
13 sought to be established has been proved beyond a reasonable doubt, then
14 the circumstantial evidence is insufficient.
15 Where evidence is both direct and circumstantial, the combination of
16 the two must satisfy you of the defendant's guilt beyond a reasonable doubt.
17 You may not make one inference from another inference, but you may
18 draw more than one inference from the same facts or circumstances.
19 The evidence does not include the indictment, opening statements, or
20 closing arguments of counsel. The opening statements and closing
21 arguments of counsel are designed to assist you. They are not evidence.
22 Statements that were stricken by the Court or which you were
23 instructed to disregard are not evidence and must be treated as though you

1 never heard them.
2 Demonstrative evidence was admitted. Demonstrative evidence is an
3 object, picture, model, or other device intended to clarify or qualify facts for
4 the jury. Such evidence is merely an aid in understanding certain facts, and it
5 is up to the jury to decide what weight to give such evidence. Demonstrative
6 evidence may be considered for the limited purpose to show whatever it is
7 presented to demonstrate looks like.
8 You must not speculate as to why the Court sustained the objection to
9 any question or what the answer to such a question might have been. You
10 must not draw any inference or speculate on the truth of any suggestion
11 included in a question that was not answered.
12 On occasion the attorneys have approached or were called to the
13 Judge's bench for purposes of consulting with the Judge out of the hearing of
14 the jury. I instruct you to disregard such activity or any conversation which
15 you may have overheard and you should not take any such matter into
16 consideration in coming to a decision in this case.
17 You are the sole judges of the facts, the credibility of the witnesses and
18 the weight of the evidence.
19 To weigh the evidence you must consider the credibility of the
20 witnesses. You will apply the tests of truthfulness which you apply in your
21 daily lives. These tests include the appearance of each witness upon the
22 stand, his or her manner of testifying, the reasonableness of the testimony,
23 the opportunity the witness had to see, hear, and know the things concerning

1 which he or she testified; the witness' accuracy of memory; frankness, or lack
2 of it; intelligence; interest and bias, if any; together with all of the facts and
3 circumstances surrounding the testimony. Applying these tests, you will
4 assign to the testimony of each witness such weight as you deem proper.
5 You should not decide any issue of fact merely on the basis of the
6 number of witnesses who testify on each side of an issue. Rather, the final
7 test in judging evidence should be the force and weight of the evidence,
8 regardless of the number of witnesses on each side of an issue. The
9 testimony of one witness, if believed by you, is sufficient to prove any fact.
10 Also, discrepancies in a witness' testimony or between his or her
11 testimony and that of others, if there are any, does not necessarily mean that
12 you should disbelieve that witness, as people commonly forget facts or
13 recollect them erroneously after the passage of time. In considering a
14 discrepancy in a witness' testimony you should consider whether such
15 discrepancy concerns an important fact or a trivial fact.
16 You are not required to believe the testimony of any witness simply
17 because he or she was under oath. You may believe or disbelieve all or any
18 part of the testimony of any witness. It is your province to determine what
19 testimony is worthy of belief and what testimony is not worthy of belief.
20 It is not necessary that the defendant take the witness stand in his own
21 defense. He has a constitutional right not to testify. The fact that the
22 defendant did not testify must not be considered for any purpose.
23 Normally a witness may not express an opinion. However, one who

1 follows a profession or special line of work may express his or her opinion
2 because of his or education, knowledge, and experience. Such testimony is
3 admitted for whatever assistance it may provide to help you to arrive at a just
4 verdict.
5 Questions have been asked of the expert witnesses after they had
6 disclosed the underlying facts or data. It is for you, the jury, to decide if such
7 facts or data upon which they based their opinions are true and you will
8 decide the weight to give such evidence.
9 As with other witnesses, on you alone rests the duty of deciding what
10 weight to give to the testimony of the experts. In deciding the weight,
11 consider their skill, experience, knowledge, veracity, familiarity with the facts
12 of this case, and the usual rules for testing credibility and believability in
13 deciding the weight to give to the testimony.
14 Each witness is subject to direct examination by the party who calls
15 him or her and to cross examination by the opposing party. During cross
16 examination counsel may inquire into matters that do not directly relate to the
17 issues involved in this case. Such questions and answers are permitted for
18 the purpose of helping you to determine his or her credibility and the weight to
19 be given to his or her testimony and for no other purpose.
20 Now, the defendant, Markelus Q. Carter, is charged with one count of
21 Aggravated Murder and one count of Having a Weapon While Under a
22 Disability. I will instruct you on each count separately. There is also a
23 specification, or an additional finding, that you will have to consider when you

1 deliberate on Count One. I will instruct you on the specification separately.
2 Before you can find the defendant guilty you have to find that the State
3 of Ohio has proved all of the elements of the offense beyond a reasonable
4 doubt.
5 Count One. Before you can find the defendant guilty of Aggravated
6 Murder in Count One you must find beyond a reasonable doubt that: On or
7 about the 23rd day of February, 2009, in Allen County, Ohio, the defendant,
8 Markelius Q. Carter, did purposely and with prior calculation and design cause
9 the death of Kenneth Warrington.
10 There are several terms relating to the charge in Count One that need
11 to be defined.
12 Purposely. Purpose to cause the death of another is an essential
13 element of the offense charged in this case. Purpose to cause the death of
14 Kenneth Warrington is an essential element of the offense charged in Count
15 One.
16 A person acts purposely when it is the person's specific intention to
17 cause a certain result, or when the gist of the offense is a prohibition against
18 conduct of a certain nature, regardless of what the offender intends to
19 accomplish thereby, it is the offender's specific intention to engage in conduct
20 of that nature. It must be established that at the time in question there was
21 present in the mind of the defendant a specific intention to cause the death of
22 Kenneth Warrington.
23 Purpose is a decision of the mind to do an act with a conscious

1 objective of producing a specific result. To do an act purposely is to do it
2 intentionally and not accidentally. Purpose and intent mean the same thing.
3 The purpose with which a person does an act is known only to himself unless
4 he expresses it to others or indicates it by his conduct.
5 The purpose with which a person does an act or brings about a result
6 is determined from the manner in which it is done, the means or weapon
7 used, and all of the other facts and circumstances in evidence.
8 If a wound is inflicted upon a person with a weapon in a manner
9 calculated to destroy life or inflict great bodily harm, the purpose to cause the
10 death may be inferred from the use of the weapon. That inference, however,
11 is not conclusive, but may be considered in determining intent.
12 Proof of motive is not required. The presence or absence of motive is
13 one of the circumstances bearing on purpose. Where an act is a crime, a
14 good motive or purpose is not a defense. No person shall be convicted of
15 Aggravated Murder unless he is specifically found to have intended to cause
16 the death of another.
17 If there was no purpose to cause the death of anyone, the defendant
18 cannot be found guilty of Aggravated Murder.
19 Prior calculation and design means that the purpose to cause the
20 death was reached by a definite process of reasoning in advance of the
21 homicide, which produces a reasoning must have included - oh - which
22 process of reasoning must have included a mental plan involving studied
23 consideration of the method and the means or instrument with which to cause

1 the death. To constitute prior calculation there must have been sufficient time
2 and opportunity for the planning of an act of homicide, and the circumstances
3 surrounding the homicide must show a scheme designed to carry out the
4 calculated decision to cause the death. No definite period of time must
5 elapse and no particular amount of consideration must be given, but acting on
6 the spur of the moment or after momentary consideration of the purpose to
7 cause the death is not sufficient.
8 Cause is an essential element of the offense of Aggravated Murder.
9 Cause is an act which directly produces the death of another and without
10 which it would not have occurred.
11 A death is the result of an act when it is produced directly by the act in
12 a natural and continuance sequence and would not have occurred without the
13 act.
14 Now, as to Count One, you must further consider the offense charged
15 in the indictment. If you find that the State proved beyond a reasonable doubt
16 all the essential elements of the offense of Aggravated Murder, your verdict
17 must be guilty as charged.
18 However, if you find that the State failed to prove beyond a reasonable
19 doubt all the essential elements of Aggravated Murder, then your verdict must
20 be not guilty of that offense; and, in that event, you will continue your
21 deliberations to decide whether the State has proved beyond a reasonable
22 doubt all of the essential elements of the lesser included offense of Murder. If
23 all of you are unable to agree on a verdict of either guilty or not guilty of

1 Aggravated Murder on Count One, then you will continue your deliberations to
2 decide whether the State has proved beyond a reasonable doubt all of the
3 essential elements of the lesser included offense of Murder. The offense of
4 Murder is distinguished from Aggravated Murder by the absence or failure to
5 prove prior calculation and design.
6 Before you can find the defendant guilty of Murder in Count One you
7 must find beyond a reasonable doubt that: On or about the 23rd day of
8 February, 2009, in Allen County, Ohio, the defendant, Markelius Q. Carter, did
9 purposely cause the death of Kenneth Warrington.
10 The definitions given previously for purposely and cause apply if you
11 are considering the lesser offense of Murder.
12 If you find the State failed to prove beyond a reasonable doubt the
13 Aggravated Murder in Count One, but you find that the State proved beyond a
14 reasonable doubt all of the essential elements of the offense of Murder, your
15 verdict must be guilty of Murder. If you find that the State failed to prove
16 beyond a reasonable doubt any one of the essential elements of the offense
17 of Murder, your verdict must be not guilty.
18 If the evidence warrants it, you may find the defendant guilty of an
19 offense lesser than that charged in the indictment. However, notwithstanding
20 this right, it is your duty to accept the law as given to you by the Court and if
21 the facts and law warrant a conviction of the offense charged in the
22 indictment, namely Aggravated Murder, then it is your duty to make such
23 finding uninfluenced by your power to find the lesser offense. This provision

1 is not designed to relieve you from the performance of an unpleasant duty. It
2 is included to prevent the failure of justice if the evidence fails to prove the
3 original charge, but just justify a verdict for the lesser offense.
4 The firearm specification on Count One. If you find Markelus Q. Carter
5 guilty of Aggravated Murder or the lesser offense of Murder in Count One, it is
6 your duty to deliberate further with respect to that count and decide whether
7 the State has proved beyond a reasonable doubt that the defendant is guilty
8 of the additional factual question which is called a specification. A
9 specification shall be proved beyond a reasonable doubt in order to support a
10 guilty verdict on the specification.
11 If you find the defendant not guilty of Aggravated Murder or Murder,
12 you will not consider or decide this separate question upon your verdict that
13 was not guilty.
14 Your finding or verdict on this additional question will be expressed by
15 a verdict of guilty or not guilty. Guilt must be proved beyond a reasonable
16 doubt.
17 If your verdict is guilty as to the Aggravated Murder charge or the
18 lesser included charge of Murder, you must separately decide whether the
19 defendant had a firearm on or about his person or under his control while
20 committing the Aggravated Murder or the Murder of Kenneth Warrington; and,
21 displayed the firearm, brandished the firearm, indicated that he possessed the
22 firearm, or used the firearm to facilitate the Aggravated Murder or the lesser
23 included Murder of Kenneth Warrington.

1 A firearm means any deadly weapon capable of expelling or propelling
2 one or more projectiles by the action of an explosive or combustible
3 propellant. A firearm includes an unloaded firearm or any firearm which is
4 inoperable, but which can readily be rendered operable. Deadly weapon
5 means any instrument, device, or thing capable of inflicting death, and
6 designed or specially adapted for use as a weapon, or possessed, carried, or
7 used as a weapon.
8 When deciding whether a firearm is capable of expelling or propelling
9 one or more projectiles by the action of an explosive or combustible
10 propellant, you may rely upon circumstantial evidence, including, but not
11 limited to, the statements or representations and actions of the individuals
12 exercising control over the firearm.
13 On or about his person means that the firearm was either carried on
14 defendant's person or was concealed ready at hand.
15 Under his control means so near the defendant's person as to be
16 conveniently accessible and within his immediate physical reach.
17 Brandish means to wave or exhibit in a menacing or challenging
18 manner.
19 Now, Count Two - Having a Weapon While Under a Disability. Before
20 you can find the defendant guilty of Having a Weapon While Under a
21 Disability as alleged in Count Two in the indictment you must find beyond a
22 reasonable doubt that: On or about the 23rd day of May (sic), 2009, in Allen
23 County, Ohio, the defendant, Markelus Q. Carter, did knowingly have,

1 acquire, or use a firearm and that Markelus Q. Carter had previously been
2 convicted of a felony offense involving the illegal possession of a drug of
3 abuse.
4 There are several terms relating to the charge in Count Two that need
5 to be defined.
6 A person acts knowingly, regardless of purpose, when the person is
7 aware that the person's conduct will probably cause a certain result or will
8 probably be of a certain nature. A person has knowledge of circumstances
9 when the person is aware that such circumstances probably exist. When
10 knowledge of the existence of a particular fact is an element of an offense,
11 such knowledge is established if a person subjectively believes that there is a
12 high probability of its existence and fails to make inquiry or acts with a
13 conscious purpose to avoid learning the fact.
14 Since you cannot look into the mind of another, knowledge is
15 determined from all of the facts and circumstances in evidence.
16 Had means possessed.
17 Possession is a voluntary act if the possessor knowingly procured or
18 received the firearm, or was aware of his control thereof for a sufficient period
19 of time to have ended his possession. A person has possession when he
20 knows that he has the object on or about his person or places it where it is
21 accessible to his use or direction and he has the ability to direct or control its
22 use.
23 Ownership is not necessary. A person may possess or control

1 property belonging to another.

2 Firearm has already been defined for you under the Specification

3 instructions for Count One. The term firearm with respect to Count Two has

4 the same meaning as it did with respect to the specification on Count One.

5 Evidence was received about the defendant's commission and

6 conviction of a previous felony offense involving the illegal possession of

7 drugs. That evidence was received only for a limited purpose. It was not

8 received, and you may not consider it, to prove the character of the defendant

9 in order to show that he acted in conformity with that character. If you find

10 that the evidence of the previous crime is true and that the defendant was

11 convicted of it, you may consider that evidence only for the purpose of

12 deciding whether it proves defendant's knowledge of circumstances

13 surrounding the offense charged in Count Two that defendant had previously

14 been convicted of a felony offense involving the illegal possession of a drug of

15 abuse. That evidence cannot be considered for any other purpose.

16 A drug of abuse means any controlled substance as defined by the

17 Ohio Revised Code Section 3719.01. Crack cocaine is a drug of abuse.

18 Possession of a drug of abuse, such as crack cocaine, is a felony offense

19 involving the illegal possession, use, sale, administration, distribution, or

20 trafficking of a drug of abuse.

21 Now, these instructions are applicable to all the counts.

22 Evidence was received about an occurrence where the police were

23 called to 122 Eureka Street in December of 2007. Evidence was received

1 about guns that are not the guns alleged to have been used with respect to
2 Count One or allegedly to have been possessed with respect to either count
3 in this case. Evidence was received about cocaine being located at 122
4 Eureka Street. Evidence was also received about the defendant having been
5 in prison after February 23rd, 2009. This all involves evidence of the
6 commission of acts other than the offenses with which the defendant is
7 charged in this trial. That evidence was received only for limited purposes. It
8 was not received, and you may not consider it, to prove the character of the
9 defendant in order to show that he acted in conformity with that character. If
10 you find that the evidence of the other acts is true and that the defendant
11 committed them, you may consider that evidence for the purpose of deciding
12 whether it proves the defendant's motive, intent, purpose, preparation, or plan
13 to commit the offenses charged in this trial, or whether it proves knowledge of
14 circumstances surrounding the offenses charged in this trial, or the identity of
15 the person who committed the offenses in this trial.
16 Testimony has been admitted indicating that the defendant was
17 involved in a physical altercation with a witness in the holding room. You are
18 instructed that defendant's conduct alone does not raise a presumption of
19 guilt, but it may tend to indicate the defendant's consciousness or awareness
20 of guilt. If you find that the facts do not support that the defendant's conduct,
21 or if you find that some other motive prompted the defendant's conduct, or if
22 you are unable to decide what the defendant's motivation was, then you
23 should not consider this evidence for any purpose. However, if you find that

1 the facts support that the defendant engaged in such conduct and if you
2 decide that the defendant was motivated by a consciousness or an
3 awareness of guilt, you may, but are not required to, consider that evidence in
4 deciding whether the defendant is guilty of the crimes charged. You alone will
5 determine what weight, if any, to give to this evidence.
6 The offenses charged are alleged to have occurred "on or about
7 February 23, 2009". It is not necessary that the State prove that the offenses
8 were committed on the exact day as charged in the indictment. It is sufficient
9 to prove that the offense took place on a date reasonably near the date
10 claimed.
11 An anonymous letter was offered to prove that a letter was sent, rather
12 than to prove that the statements in the letter were true. You are not to
13 consider that anonymous letter as proof of what the letter says.
14 If you find the State proved beyond a reasonable doubt all the
15 essential elements of the offenses charged in the indictment, or a lesser
16 included offense on Count One, your verdict must be guilty as to such
17 offense.
18 If you find the State failed to prove beyond a reasonable doubt any one
19 of the essential elements of either of the offenses charged in the indictment,
20 or a lesser included offense on Count One, your verdict must be not guilty as
21 to such offense according to your findings.
22 The defendant can be found guilty of only one offense in Count One.
23 Whether the State proved the firearm specification beyond a reasonable

1 doubt must be decided on Count One in the event if you find the defendant
2 guilty of either the offense charged, Aggravated Murder, or the lesser offense
3 of Murder.
4 You may not discuss or consider the subject on punishment during
5 your deliberations. Your duty is confined to the determination of the guilt or
6 innocence of the defendant and the additional finding in the specification.
7 You will have with you in the jury room the verdict forms for each count
8 and the specification on Count One. I will now read the forms to you. That
9 caption is the case number and the name of the case that I read every time
10 we get started. I won't reread that. But, the verdict in Count One reads -
11 "We, the jury, being duly impaneled, sworn and affirmed, find the State of
12 Ohio," blank, and then there's a little instruction to fill in 'did' or 'did not',
13 "prove beyond a reasonable doubt that Markelus Q. Carter did purposely and
14 with prior calculation and design cause the death of Kenneth Warrington on
15 September (sic) 23rd, 2009 and in Allen County, Ohio. Therefore, we find
16 beyond a reasonable doubt that Markelus Q. Carter," either is 'guilty' or 'not
17 guilty', "of Aggravated Murder as charged in Count One of the indictment."
18 Then there's a space for the date and the signatures of the jurors that reach
19 that verdict.
20 Then it goes on in Count One - "If your verdict is guilty of Aggravated
21 Murder on Count One, do not consider the lesser included offense of Murder.
22 If your verdict is not guilty of Aggravated Murder, proceed to consider the
23 lesser included offense. The lesser included offense of Murder is to be

1 considered only if you determine that the State failed to prove beyond a
2 reasonable doubt that the defendant is guilty of Aggravated Murder.
3 Defendant can be found guilty of only one offense on Count One."
4 So, if you got to that point, the lesser included offense of Murder
5 verdict form would read - "We, the jury, being duly impaneled, sworn and
6 affirmed, find the State did not prove beyond a reasonable doubt that the
7 defendant, Markelus Q. Carter, is guilty of Aggravated Murder as alleged in
8 Count One of the indictment, and we find that the State blank," either 'did' or
9 'did not', "prove beyond a reasonable doubt that on or about the 23rd day of
10 February, 2009, in Allen County, Ohio, the defendant, Markelus Q. Carter, did
11 purposely cause the death of Kenneth Warrington. Therefore," it reads, "we
12 find beyond a reasonable doubt that the defendant is blank," either 'guilty' or
13 'not guilty', "of the lesser included offense of Murder in Count One." There's
14 signature lines and a date line.
15 The next instruction would be, "Proceed to the specification only if you
16 find the defendant guilty of Aggravated Murder or Murder." This is the verdict
17 for the specification on Count One. It reads, omitting the caption, "We, the
18 jury, being duly impaneled, sworn and affirmed, having found defendant guilty
19 of," and there's a blank and you're either going to insert in ink 'Aggravated
20 Murder' if you found beyond a reasonable doubt the defendant was guilty of
21 Aggravated Murder or you're going to leave that blank if you found the
22 defendant guilty of Murder and so it would just read Murder, "in Count One,
23 further find the State," either 'did' or 'did not', "prove beyond a reasonable

1 doubt that the defendant had a firearm on or about his person or under his
2 control while committing the Aggravated Murder or Murder," whichever one it
3 is, "and displayed the firearm, brandished the firearm, indicated that he
4 possessed the firearm, or used the firearm to facilitate either the Aggravated
5 Murder or the Murder of Kenneth Warrington and, therefore, we find beyond a
6 reasonable doubt that the defendant, Markelus Q. Carter, is "either 'guilty' or
7 'not guilty', "of the specification on Count One." So, there's instructions there,
8 and there's signature lines, and a date line.
9 Moving to Count Two, the verdict form, there's just one verdict, one
10 sheet - "We, the jury, being duly impaneled, sworn and affirmed, find the
11 State of Ohio," either 'did' or 'did not', "prove beyond a reasonable doubt that
12 Markelus Q. Carter did knowingly have, carry, or use a firearm and that he
13 had previously been convicted of a felony offense involving the illegal
14 possession of a drug of abuse. Therefore, we find beyond a reasonable
15 doubt that Markelus Q. Carter, is "either 'guilty' or 'not guilty', "of Having a
16 Weapon While Under a Disability as charged in Count Two of the indictment."
17 So, let's continue. Those are the verdict forms. When you have
18 reached a verdict you will complete the form, or forms, in the manner that
19 corresponds with your decision and sign the verdicts in ink.
20 You must not be influenced by any consideration of sympathy or
21 prejudice. It is your duty to carefully weigh the evidence, to decide all
22 disputed questions of fact, to apply the instructions of the Court to your
23 findings, and to render your verdict accordingly. In fulfilling your duty your

1 efforts must be to arrive at a just verdict. Consider all of the evidence and
2 make your findings with intelligence and impartiality, and without bias,
3 sympathy, or prejudice so that the State of Ohio and the defendant will feel
4 that this case was fairly and impartially tried.
5 If, during the course of the trial, the Court has said or done anything
6 that you consider an indication of the Court's view on the facts, you are
7 instructed to disregard it.
8 Now, it may be difficult for you to remember all of the instructions that I
9 have given you. You will have a copy of all of this to use in your
10 deliberations. But, if during your deliberations you cannot remember or are in
11 doubt about a portion of the instructions you may request such information by
12 asking the Court a question. The foreperson must put your question in
13 writing, indicating specifically what is requested. Such communication must
14 be delivered to the bailiff.
15 Do not investigate or attempt to obtain additional information about this
16 case from any source outside the Courtroom. This includes making calls or
17 doing research on a cell phone, smart phone, or I-Phone during deliberations.
18 You are instructed to turn your phones and other electronic devices off during
19 deliberations. You must not make or accept any calls or use the electronic
20 devices in any way or for any reason during deliberations. If you have a
21 special concern about expecting an emergency call from a family member or
22 otherwise today, turn your phone over to the bailiff and she will notify the
23 Court and you if a call comes in. It is vital that you carefully follow these

1 instructions. The reason is simple. The law requires that you consider only
2 the testimony and evidence you hear and see in the Courtroom. If you have a
3 question about the instructions, ask the Court for clarification.
4 Your initial conduct upon entering the jury room is a matter of
5 importance. It is not wise immediately to express a determination to insist
6 upon a certain verdict because if your sense of pride is aroused you may
7 hesitate to change your position even if you later decide you are wrong.
8 Consult with one another, consider each other's views, and deliberate
9 with the objective of reaching an agreement, if you can do so without
10 disturbing your individual judgment. Each of you must decide this case for
11 yourself, but you should do so only after a discussion and consideration of the
12 case with your fellow jurors. Do not hesitate to change an opinion if you are
13 convinced that it is wrong. However, you should not surrender an honest
14 conviction in order to be congenial or to reach a verdict solely because of the
15 opinion of other jurors.
16 After you retire, select a foreperson. Whenever all twelve - I repeat -
17 all twelve jurors agree upon a verdict you will sign the verdict in ink and
18 advise Monica when you're done with both counts by calling 8831 on the
19 phone in there. You will then be returned to the Courtroom.
20 The Court will place in your possession the exhibits and the verdict
21 forms. The foreperson will retain possession of these records, including the
22 verdicts, and return them to the Courtroom. The foreperson will see that your
23 discussions are orderly and that each juror has the opportunity to discuss the

1 case and to cast his or her vote; otherwise, the authority of the foreperson is
2 the same as any other juror.
3 Until your verdict is announced in open Court you are not to disclose to
4 anyone else the status of your deliberations or the nature of your verdict.
5 DVD and CD recordings and testimony relating to them have been
6 introduced into evidence. You shall consider whether the CD and DVD's are
7 true records of what transpired at the time they were recorded. If you find that
8 they are, you will then determine what weight, if any, the CD and DVD's
9 should receive in light of all of the evidence.
10 You will have with you in the jury room, as exhibits, the CD and DVD's
11 that were introduced into evidence. If, and whenever, you wish to view or
12 listen to the DVD's or the CD, the Court instructs you that this must be done
13 under the control of the bailiff or other person designated by the Court, rather
14 than a member of the jury panel. Please make your requests accordingly.
15 No deliberations shall take place in the presence of the bailiff or other person.
16 Now, an alternate juror, Miss Harris, was selected to serve in the event
17 of any misfortune to a member of the panel. It will not be necessary for you to
18 deliberate at this time. However, the Court orders that you shall be retained
19 after the jury retires to deliberate so that you can be called into service if
20 something happens that prevents one of the jurors from finishing. You do not
21 have to stay in this building, but you are not released from the order that you
22 not discuss this case with anyone until you either replace a juror or are
23 officially discharged. If an alternate replaces a juror after deliberations have

1 begun, the Court must instruct the jury to being its deliberations anew. Miss
2 Harris, you are not to discuss this case or tell anyone how you would have
3 voted until after the jury has returned a verdict. You can be excused, but, see
4 the bailiff before you leave so we know how to contact you if we need you.
5 You are not officially discharged and must still abide by my previous
6 admonitions.
7 Again, folks, you are not permitted to discuss the case amongst
8 yourselves or with anyone else until your verdict has been returned and until
9 the Court formally discharges you from your duties as a juror. That goes
10 mainly for the alternate. Obviously the jurors can discuss it among
11 themselves when they're in the jury room.
12 Whether you discuss this case with counsel after the case is done, or
13 anyone else after you are discharged, is a matter of your own free choice.
14 Does counsel for the State desire anything further at this time?
15 MRS. KOHLRIESER: Your Honor, just
16 one thing. When you were reading the date for the Weapon Under Disability,
17 the official instructions and not on the verdict form, I think you misspoke and
18 said 'May' when it's actually 'February 23rd'. The verdict form is correct.
19 THE COURT: All right. If I did -- well, let
20 me double check.
21 MRS. KOHLRIESER: The instructions say
22 'February'.
23 THE COURT: If I said 'May', well, it's

1 clearly in the instructions and on the verdict form the 23rd day of February
2 that we're talking about. I apologize if I did that.
3 MRS. KOHLRIESER: That's it, your Honor.
4 Honor.
5 THE COURT: Anything else from the
6 State?
7 MRS. KOHLRIESER: No, your Honor.
8 THE COURT: Anything from the defense?
9 MR. RION: No, your Honor.
10 THE COURT: Okay. On behalf of the
11 public, ladies and gentlemen, and the parties in this case, I would like to
12 express my appreciation for your services in performing this important
13 function.
14 Now, here's the deal. It's about twenty after four. We'll get this stuff to
15 you, the exhibits and the jury instructions and things, and you can start your
16 deliberations. Probably within a few moments Monica will come in and will
17 take supper orders. We'll feed you because we're not going to have you go
18 out to have your supper on your own. You'll eat as a group. If you need to
19 make calls home to let folks know that you're going to have supper here, you
20 know, you can do that. Again, when Monica is in there don't deliberate and
21 don't express any opinions about the case. But, if you need to make those
22 kinds of arrangements -- well, other than that, turn off the cell phones, like I
23 said before.

1 We'll just wait and see how things go and for how late we go. I'm
2 trying to be considerate of your time. I know you've sat through a lot. You
3 guys deliberate as long as you need to deliberate. But, we may manage
4 some time later this evening. We'll see what's going on. Okay?
5 All right. We'll stand in recess until the jurors let us know they either
6 have a question or verdicts. Parties - let the Court know, Monica or Court
7 staff, know if you're not going to stick around where we can quickly reach you.
8 All right. The jurors are excused.
9 **(WHEREUPON, JURY DELIBERATIONS COMMENCED AT 4:20 P.M.)**
10 **THE COURT:** The jurors have left the
11 room. I just wanted to make sure -- I believe I read through them, but there
12 were some typos, and plurals and I read singulars with regard to the prior
13 conviction. I will change all of that on the instructions that go to the jurors. I
14 caught -- I think I might have slipped one 'S' in there for a plural, but I'll
15 change the instructions. I caught it and read it in the singular. There were a
16 couple of other typos, that I caught and I'll correct all of those. If counsel
17 wants a clean copy of the ones that are going to be submitted to the jurors,
18 well, see the staff and we'll make copies for you.
19 Before I forget it, too, I want counsel to turn over the jury lists that were
20 handed out, the questionnaires and all that stuff. Hand those over to the
21 Court. The original copy will be in the Court file. But, other than that, I don't
22 want them floating around. All right?
23 MR. RION: Judge, those may be in my

1 living room.
2 MRS. KOHLRIESER: I don't have mine
3 immediately available, either.
4 THE COURT: Well, get them to me. I'll
5 trust your representations. Okay.
6 (WHEREUPON, Court was in recess.)
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lateness of the hour of the night. This will give any of you folks that need to
deliberations. Your deliberations are going to be interrupted because of the
So, we're going to take an evening recess now and interrupt your
trying to be conscientious here and I understand that it's been a long day.
have given you the instructions I know you're working diligently. But, I'm
especially you folks. Now that the lawyers have presented the case and I
Ladies and gentlemen of the jury, it's been a long day for everyone,
jurors have been returned to the Courtroom at the request of the Judge.
the defendant is in the Courtroom with counsel. The State is present. The
CR2014 0139, State of Ohio -vs- Markelus Q. Carter. The record will reflect
about 7:30 P.M. on Monday, the 21st of September, 2015 in Case Number
THE COURT: We're on the record. It's

7:30 P.M.
MONDAY, SEPTEMBER 21, 2015

1 make arrangements for transportation, or kids, or work, to get those done so
2 it's not too late to do that.
3 Now, the Court cautions you that this is a delicate moment when
4 comment concerning the case or the status of your deliberations is improper
5 and may prejudice the rights of either party or require a new trial. You will be
6 permitted to separate for overnight and will return to the Courtroom and
7 resume your deliberations at nine o'clock. Does anyone have a problem
8 getting back at nine? So, nine o'clock is when you'll be back here. Before
9 you start your deliberations I'll have you in the Courtroom. We'll go on the
10 record and make sure that no one has been exposed to anything or any
11 violation of any of the admonitions have happened and then I'll let you go
12 back and start your deliberations.
13 Before you leave the foreperson shall make sure that all the exhibits
14 are left here. Monica will go in and make sure of that. Leave your notepads.
15 Do not let anyone, including the bailiff, know what's in your notes.
16 During your absence remember that you are a member of a
17 deliberating body. Do not deliberate or discuss this case until you return to
18 the jury room tomorrow morning. Do not discuss this case with anyone until
19 you are all together tomorrow morning. You are instructed not to read, view,
20 or listen to any report in the newspaper, the radio, or television on the subject
21 of this trial. Do not permit anyone to read or comment upon them to you or in
22 your presence. Do not permit anyone to discuss this case with you or in your
23 presence. Do not investigate or attempt to obtain additional facts about this

1 case. It would be improper if any of you would attempt to do so. The
2 standard admonitions that I have been giving all along still apply.
3 So, with that, anything from the State before we break for the evening
4 and to return at nine o'clock?
5 MRS. KOHLRIESER: No, your Honor.
6 THE COURT: Anything from the defense?
7 MR. RION: No, your Honor.
8 THE COURT: Like I said, at nine o'clock,
9 when everybody is here, we'll get you in and just make sure that everybody is
10 still able to continue and be fair and impartial and then we'll let you go back
11 into your deliberations. Okay?
12 Then, if that's the case, the jurors will be excused and we'll recess the
13 deliberations until nine o'clock tomorrow morning.
14 (WHEREUPON, COURT RECESSED FOR THE DAY AT 7:33 P.M.)
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4 THE COURT: Today is the 22nd day of
5 September, 2015. We are reconvening in Case Number CR2014 0139, State
6 of Ohio -vs- Markelus Q. Carter. I want the record to reflect the defendant is
7 in the Court room with his attorney. The State is present through the
8 Prosecuting Attorney's office. The jurors have returned from the recess, the
9 recess of their deliberations.
10 So, welcome back, ladies and gentlemen. The first question I need to
11 ask is similar to what I've asked you before - have any of the jurors had a
12 violation of the admonitions that I've been giving, or has anybody been
13 exposed to anything, or has anything happened in any of your lives that you
14 feel is going to prevent you from continuing your service now that you're in
15 deliberations from continuing your deliberations in a fair and impartial
16 manner? Anyone have any issues? Okay. So, they're indicating not.
17 Again, the rules that have been given to you as far as deliberations still
18 are in effect. Do not reveal the status of your deliberations or the nature of
19 your discussions with anyone when you're in a setting like this where other
20 people are present, anybody present, including the bailiff.
21 I know there was a request in terms of changing the location of your
22 deliberations. Obviously we had you meet in the Grand Jury room today for
23 purposes of logistics here this morning to get you all together. I know that's

9:10 A.M.

TUESDAY, SEPTEMBER 22, 2015

1 a little cramped, especially with the great volume of evidence you have in our
2 jury room, but you'll notice in there the wall has that padding and that was for
3 soundproof reasons, for privacy reasons. We just don't have that capability in
4 that other room. So, I'm going to say that you stay in this room here. We've
5 tried to get the temperature down here so maybe it won't get so warm.
6 Another accommodation we might be able to do is lock this room and open
7 the door and have the fan out here blowing cooler air in there so that the fan
8 doesn't disrupt in there. But, we'll try to accommodate that.
9 So, go back and continue your deliberations under the same rules that
10 we had yesterday.
11 Anything from the State?
12 MRS. KOHLRIESER: No, your Honor.
13 THE COURT: Anything from the defense?
14 MR. RION: No, your Honor.
15 THE COURT: All right. We'll stand in
16 recess until the jurors indicate they have a question or a verdict.
17 (WHEREUPON, CONTINUATION OF JURY DELIBERATIONS
18 COMMENCED AT 9:13 A.M.)
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4 THE COURT: Okay. It's approximately
5 11:50 on September 22nd, 2015 and we are reconvening in Case Number
6 CR2014 0139, State of Ohio -vs- Markelus Q. Carter. The record will reflect
7 the defendant is present in Court with his attorney, Jon Paul Rion. Assistant
8 Prosecuting Attorneys Anthony Miller and Terri Kohlireser are here for the
9 State of Ohio. The jurors have been returned to the Courtroom at this time,
10 after they informed the bailiff that they had reached verdicts. I understand,
11 juror number nine, you were appointed the foreperson; is that correct?
12 JURY FOREPERSON: Yes.
13 THE COURT: And have you reached
14 verdicts?
15 JURY FOREPERSON: We have.
16 THE COURT: All right. If you would fold
17 those over and hand those over to the bailiff she can turn them over to me
18 and I'll review them. Thank you.
19 Okay. The Court just wanted to review and make sure that all the
20 open slots were filled in according to the instructions and all jury verdict forms
21 are completed by signatures of the jurors.
22 The Court will now read the jury verdicts. Omitting the caption, the
23 verdict on Count number One reads - "We, the jury, being duly impaneled,

1 sworn and affirmed, find the State of Ohio DID prove beyond a reasonable
2 doubt that Markelus Q. Carter did purposely and with prior calculation and
3 design cause the death of Kenneth Warrington on February 23rd, 2009 and in
4 Allen County, Ohio. Therefore," it reads, "we find beyond a reasonable doubt
5 that Markelus Q. Carter is GUILTY of Aggravated Murder as charged in Count
6 One of the indictment."
7 That is signed with today's date, the 22nd day of September, 2015,
8 and signed by all jurors.
9 The second page with regard to the lesser included offense is not filled
10 in.
11 The verdict on the specification for Count One reads - "We, the jury,
12 being duly impeled, sworn and affirmed, having found the defendant guilty
13 of Aggravated Murder in Count One, further find the State DID prove beyond
14 a reasonable doubt that the defendant had a firearm on or about his person or
15 under his control while committing the Aggravated Murder and displayed the
16 firearm, brandished the firearm, indicated that he possessed the firearm, or
17 used the firearm to facilitate the Aggravated Murder of Kenneth Warrington
18 and, therefore, we find beyond a reasonable doubt that the defendant,
19 Markelus Q. Carter, is GUILTY of the specification on Count One." That's
20 signed with today's date, in ink, by all twelve jurors.
21 The verdict on Count Two reads - "We, the jury," omitting the caption,
22 reads, "we, the jury, being duly impeled, sworn and affirmed, find the State
23 of Ohio DID prove beyond a reasonable doubt that Markelus Q. Carter did

1 knowingly have, carry, or use a firearm and that he had previously been
2 convicted of a felony offense involving the illegal possession of a drug of
3 abuse. Therefore, we find, beyond a reasonable doubt, that Markelius Q.
4 Carter is GUILTY of Having a Weapon While Under a Disability as charged in
5 Count Two of the Indictment." It's dated today's date and signed by all twelve
6 jurors.
7 Again, the Court has read the verdicts into the record. Does either
8 party wish to have the jurors polled? Does the State of Ohio?
9 MRS. KOHLRIESER: No, your Honor.
10 THE COURT: Mr. Rion, does the
11 defense?
12 MR. RION: Yes, your Honor.
13 THE COURT: Okay. Ladies and
14 gentlemen of the jury, either party is entitled to have what was say is a polling
15 of the jurors where I'm going to go down the line, just numerically, and ask
16 you if these are your verdicts. A simple 'yes' or 'no' is what we're looking for.
17 I know, because of our seating arrangement, we had juror number two seated
18 in the first seat. But, I'll start with juror number one. Are these your verdicts?
19 JUROR NUMBER ONE: Yes.
20 THE COURT: Juror number two, are these
21 your verdicts?
22 JUROR NUMBER TWO: Yes.
23 THE COURT: Juror number three, are

1 these your verdicts?
2 JUROR NUMBER THREE: Yes.
3 THE COURT: Juror number four, are
4 these your verdicts?
5 JUROR NUMBER FOUR: Yes.
6 THE COURT: Juror number five, are these
7 your verdicts?
8 JUROR NUMBER FIVE: Yes.
9 THE COURT: Juror number six, are these
10 your verdicts?
11 JUROR NUMBER SIX: Yes.
12 THE COURT: Juror number seven, are
13 these your verdicts?
14 JUROR NUMBER SEVEN: Yes.
15 THE COURT: Juror number eight, are
16 these your verdicts?
17 JUROR NUMBER EIGHT: Yes.
18 THE COURT: Juror number nine, are
19 these your verdicts?
20 JUROR NUMBER NINE: Yes.
21 THE COURT: Juror number ten, are these
22 your verdicts?
23 JUROR NUMBER TEN: Yes.

1 THE COURT: Juror number eleven, are
2 these your verdicts?
3 JUROR NUMBER ELEVEN: Yes.
4 THE COURT: And, juror number twelve,
5 are these your verdicts?
6 JUROR NUMBER TWELVE: Yes.
7 THE COURT: Okay. The Court has polled
8 the jurors. All jurors have indicated on the record that these are their verdicts.
9 With that, the Court is going to accept the verdicts of the jurors and
10 enter a judgment of conviction in this case on the verdicts of the jurors - a
11 conviction of the Aggravated Murder in Count One with the firearm
12 specification and a judgment entry of conviction on Count Two on the Having
13 a Weapon While Under a Disability.
14 With the acceptance of the verdicts and the judgment entry on the
15 verdicts, ladies and gentlemen of the jury, now your obligations to the Court,
16 well, you are discharged and your obligations are over with. This was a long
17 case in terms of duration. A lot of information. A very serious case,
18 obviously. But, I just want to thank you on behalf of the Court, the Court staff,
19 and the community for your service as jurors. These aren't pleasant things.
20 They're difficult at times. You paid attention. You stayed in there when we
21 had delays. But, I do, I really sincerely appreciate your service as jurors. You
22 can be proud of your service as jurors in this case. With that, the jury will be
23 discharged.

1 We are going to move to sentencing at this time. We'll give the State
2 of Ohio an opportunity to be heard. We'll give a representative of the victim's
3 family an opportunity to be heard. You guys are free to go, if you want, or you
4 can stick around. It's all up to you. Okay? Again, your obligation to speak to
5 anybody, you don't have to talk to anybody. That's entirely up to you if you
6 want to. If anybody bothers you about anything, let us know, because there's
7 rules against that, even though you are being discharged.
8 (WHEREUPON, jurors were discharged and excused from the Courtroom.)
9 MRS. KOHLRIESER: Your Honor, may I
10 approach a moment?
11 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on
12 the record, as follows.)
13 MRS. KOHLRIESER: This is the victim
14 impact statement. It's kind of lengthy. I didn't know if you wanted to break for
15 a few minutes to read it over or not. It's an attached paper.
16 THE COURT: Do they want to be heard at
17 sentencing?
18 MRS. KOHLRIESER: No. She wants you
19 to review it privately.
20 THE COURT: Okay. All right.
21 (WHEREUPON, Court continued on the record, as follows.)
22 THE COURT: Okay. The jurors have left
23 the room. We'll continue with sentencing, as I indicated. I was going to say

1 that I would give the State an opportunity to be heard and I would give a
2 representative from the victim's family an opportunity to be heard and I'll give
3 the defense an opportunity to be heard. I just was handed a victim impact
4 statement on behalf of the victim that has, also, an attached letter. So, I will
5 review that and listen carefully to the presentation. The State of Ohio may be
6 heard.
7 MR. MILLER: Your Honor, thank you very
8 much. The Court is somewhat aware of Markelus' priors in that at least one
9 of his priors was heard before this Court and that would be what I would refer
10 to as the gun and drug case that was sort of a brother case to this case,
11 which would be, you know, the prior trial and conviction for Possession of
12 Cocaine and Weapons Under Disability. The Court is also aware, due to the
13 evidence presented in this case, that Mr. Carter has a 1995 conviction for a
14 drug charge, whether it be Possession of Cocaine/Trafficking of Cocaine. Those
15 I would also highlight some of the facts of this particular case. Those facts
16 span some fourteen months between the date of September - I'm sorry -
17 December 17th of 2007 and February 23rd, 2009. During that period of time
18 Mr. Carter plotted, planned, and then finally perpetrated this crime.
19 Your Honor, it's the State's position that the defendant be sentenced to
20 the maximum amount under the law. I would defer any other further
21 comment, as I do many times in these particular cases, to the victim impact
22 summary that the Court now has before it, which I believe contains Mrs.
23 Warrington's written statement. I think it is particularly important in these

1 cases that, quite frankly, the prosecution limit its comments in deference to
2 the victims in these cases and in this case in particular where a life has been
3 taken, unnecessarily so, and I defer with honor, frankly, to Mrs. Warrington's
4 comments that are attached to the victim impact summary. It is my
5 understanding that Mrs. Warrington does not want to make a statement. She
6 does not want to make a statement here before the Court, but, she has, as I
7 said, made a statement attached to the victim impact summary.
8 So, with that, your Honor, I defer to Mrs. Warrington and I thank the
9 Court for its time during the last two weeks.
10 THE COURT: All right. Thank you. The
11 Court has, like I said, just got in receipt the victim impact summary that
12 includes a letter from Mrs. Warrington that I have reviewed. Again, it's my
13 understanding the victim does not care to be heard?
14 MR. MILLER: That is correct.
15 THE COURT: Okay. All right. Mr. Rion,
16 do you want to be heard on behalf of Mr. Carter?
17 MR. RION: Your Honor, Markelus Carter
18 maintains his innocence. Given that position, which I believe he's held
19 consistently throughout this case, it's hard to argue anything except for that
20 statement that he believes he's innocent of these charges. The evidence in
21 this case, as you know, was primarily circumstantial. I have great concern as
22 to the weight of the evidence that was found in this case. That's all I have,
23 your Honor.

1 THE COURT: I understand. Mr. Carter,
2 you have a right to be heard if there's anything you want to say.
3 DEFENDANT: Yes. I am a hundred percent innocent. I have nothing more
4 to add than that this is a travesty on my part and the part of the victim's family
5 because whoever did this is still out there and I, myself, will not stop until that
6 person is brought to justice. I am not that person. I have, from the beginning,
7 tried to put in position all of the right facts and tried to bring forth the truth from
8 everyone. When that failed it seems that more lies came about for the selfish
9 need of others - not the truth - but, a seemingly easy way out, an easy way
10 out for the investigative part, other people who seem to want some other gain.
11 We have a person that is deceased, no longer with us, but not from
12 something I did, not because of something I did. I can't change that. I can't
13 change the fact that someone is gone due to no fact of mine, due to no
14 purpose of mine. I had nothing whatsoever to gain from this man dying.
15 None whatsoever. I am separated from my family and as much as dead as
16 that man is to his due to the fact that someone carelessly, maliciously, and
17 maliciously took that man's life. Now it's cost me my life. I am not guilty. I did
18 not do this. Had I done this I would have accepted responsibility a long time
19 ago. I am facing the rest of my life for fighting for what I believe. I'm fighting
20 for my family and for everyone else to know the truth. I did not kill Ken
21 Warrington. I want his wife to know that and his family to know that. Had I
22 did this I would have admitted it. I did not do this. You, as well as I, should
23 not ever stop wanting justice for the person who's done this. Mrs. Warrington,

1 I am sorry for your loss, but I did not cause it. I am sorry. I will not stop
2 looking because I've suffered, my family has suffered, and you have suffered.
3 This is not on us. We did not cause this. I have never at one time threatened
4 anyone in your family or you. Ken was a good man, with the exception of
5 being with the wrong person who manipulated him. He was a good man.
6 MR. MILLER: Your Honor, I'm going to
7 ask that the defendant stop addressing the victim's family.
8 MRS. KOHLRIESER: This is mitigation.
9 THE COURT: He has a right.
10 DEFENDANT: I'm sorry for your loss. I did not cause this loss. With
11 everything in my being I will still not stop looking because I've suffered. I've
12 suffered, you've suffered, and your family has suffered. We all know that
13 someone else is responsible for this.
14 THE COURT: Okay. All right then.
15 There's not a whole lot more for the Court to say. I did want to put on the
16 record, and I neglected to do that because I've already entered the judgments
17 of conviction, but I'm finding that the two counts do not merge under State v.
18 Ruff because I find there were separate animuses involved with the separate
19 counts. I would cite to cases like State -vs- Cowan, an Eighth District,
20 Cuyahoga County Case Number 97877. It's 2012-Ohio-5723. Also, State
21 -vs- Hodges from Cuyahoga County. It's 2013-Ohio-5025. State -vs- Cowan,
22 2012-Ohio-5723. I know that those predate the Ruff case, but the test, the
23 three part test in the Ruff case, well, the third prong is where the offense is

1 committed with a separate animus. The cases I cited stand for the
 2 proposition that the animus of Having a Weapon Under Disability is making a
 3 conscious choice to possess a weapon. So, when a person chooses to
 4 possess a weapon that's a separate animus than using the weapon to commit
 5 another crime, which in this case with the gun specification it was found that
 6 the weapon was used to commit the Aggravated Murder. So, that's why I find
 7 that they didn't merge and that's why I entered convictions on both counts.
 8 The Court will move to sentencing now. The Court finds the defendant
 9 has been convicted upon a judgment after a jury trial and upon the verdicts of
 10 the jurors on Count One, the Aggravated Murder with a firearm specification,
 11 and on Count Two, Having a Weapon Under Disability, a felony of the third
 12 degree.
 13 Again, the Court finds the counts do not merge.
 14 Mandatory prison is required on Count One and on the specification.
 15 The Court would find that under 2929.12 the offense was more serious
 16 than conduct normally constituting the offense. It's one of the factors that
 17 kind of doesn't make a whole lot of sense to say that because the harm done
 18 obviously is the ultimate harm that can be done. But, one of the factors is that
 19 the victim suffered serious physical harm as a result of the offense. That's
 20 one of the enumerated factors. I just take that into consideration for what it's
 21 worth.
 22 There's no factors indicating that it was less serious.
 23 There are factors indicating the defendant is likely to commit future

1 crimes. Those include that he has previously been convicted of criminal
2 offenses and he has not been rehabilitated to a satisfactory degree and has
3 not responded favorably to sanctions previously imposed. That is previous to
4 this offense, I would make note of.
5 He doesn't have a juvenile record other than a traffic, a juvenile traffic
6 offender record. So, I would make note of that. That's a factor that indicates
7 he's not likely to commit future crimes.
8 I don't have an ORAS score, for what that's worth.
9 I will not make any comment on the defendant has the right to maintain
10 his innocence. So, whether or not there's genuine remorse or not I will not
11 make a finding on.
12 Mandatory prison here. So, the Court further finds that after
13 considering the factors in 2929.12 a prison sentence is consistent with the
14 purposes and principles of sentencing. The defendant is not amenable to
15 community control. Community control would be demeaning. It would be
16 illegal on Count One. But, it would be demeaning to the seriousness of the
17 conduct and impact on the victim. Prison is commensurate with the
18 seriousness of the conduct and impact on the victim and does not place an
19 unnecessary burden on State governmental resources.
20 So, it will be the judgment of the Court the defendant will be sentenced
21 on Count number One, the Aggravated Murder of Kenneth Warrington, to a
22 life sentence in prison without the opportunity for parole. He'll have also three
23 years on the gun specification, which is mandatory. The life without parole is

1 also mandatory.
2 The defendant will be sentenced to thirty-six months on Count number
3 Two, which is not mandatory.
4 I will run Count number Two concurrent with Count number One.
5 The defendant is subject to post-release control on Count number
6 Two. It's optional three years of post-release control, which is supervision
7 after the prison sentence on Count number Two. It's supervision for three
8 years by the Adult Parole Authority. If the defendant violates post-release
9 control he could be returned to prison on that count for up to one-half the
10 stated prison sentence. If he is on post-release control and commits another
11 felony and gets sent to prison on a new felony additional prison time can be
12 added to that sentence equal to the balance of the post-release control time,
13 or one year, whichever is greater. That's part of the sentence on Count
14 number Two.
15 The defendant is ordered to pay the court costs in this case. Judgment
16 will be entered for the court costs.
17 The defendant is ordered to give a DNA sample to the State of Ohio.
18 The defendant will be given credit for time served. I'll have to calculate
19 that because I'll have to double-check when he started being incarcerated for
20 this particular offense. I'm sure it was shortly after the indictment. But, we'll
21 give credit for all the time served in the Allen County Jail, plus any additional
22 time waiting transportation to the Department of Corrections.
23 Anything further from the defense, Mr. Rion?

1 MR. RION: No, your Honor.

2 THE COURT: Anything from the State?

3 MR. MILLER: No, sir.

4 THE COURT: All right then. It's my duty,

5 Mr. Carter, to advise you that you have the right to an appeal. If you are

6 unable to pay the costs of an appeal you have the right to an appeal without

7 payment. If you are unable to obtain counsel for an appeal counsel will be

8 appointed without costs. If you are unable to pay the costs of the documents

9 necessary for an appeal the documents will be provided without costs. You

10 have the right to have a notice of appeal timely filed upon your behalf.

11 So, Mr. Rion, if the defendant intends to appeal the decision, make

12 sure a notice of appeal is timely filed. If he's going to seek court appointed

13 counsel, make application for that. Can you do that?

14 MR. RION: I'll do that for the Court, your

15 Honor.

16 THE COURT: All right. If there's nothing

17 further then, the Court will stand adjourned.

18 (WHEREUPON, COURT ADJOURNED AT 12:12 P.M.)

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C E R T I F I C A T E

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3 I, Susan K. Thomas, Court Reporter for the Court of Common Pleas of
4 Allen County, Ohio, duly appointed therein, do hereby certify that the
5 foregoing, consisting of 1,873 pages, is a true and complete transcript of the
6 Jury Trial as transcribed by me pertaining to Case Number CR2014 0139
7 conducted in that Court on the 8th, 9th, 10th, 11th, 14th, 15th, 16th, 17th,
8 18th, 21st, and 22nd day of September, 2015 before the Honorable Jeffrey L.
9 Reed, Judge of said Court.
10 I do further certify that I was personally present in the Courtroom
11 during all of the said proceedings, except for the 18th day of September, 2015
12 (pages 1,589 - 1,698). However, I did transcribe the proceedings for that day,
13 along with the rest of the proceedings for which I was personally present.

SUSAN K. THOMAS, Court Reporter

CERTIFICATE

1 I, Monica M. Garlock, Assistant Court Reporter for the Court of
2
3 Common Pleas of Allen County, Ohio, duly appointed therein, do hereby
4 certify that I was personally present in the Courtroom during the proceedings
5 held on September 18, 2015 pertaining to Case Number CR2014 0139 before
6 the Honorable Jeffrey L. Reed, Judge of said Court. Said portion of the trial
7 for that day was transcribed by Susan K. Thomas, Court Reporter for the
8 Court of Common Pleas of Allen County, Ohio, duly appointed therein (pages
9 1,589 - 1,698).

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MONICA M. GARLOCK, Assistant Court Reporter